IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 5142/MUM/2024 (AY: 2015-16)
ITA No. 5143/MUM/2024 (AY: 2016-17)
(*Physical hearing*)

DCIT Circle- 5(2) (1), Mumbai, Room No. 571, 5th Floor, AayakarBhavan,M.K. Road, Mumbai – 400020.	vs	M/s JSW Steel Coated Products Limited, JSW Centre, BandraKurla Complex, Bandra East, Mumbai-400051. [PAN:AACCM3988L]
Appellant / Assessee		Respondent / Revenue

C.O. No. 257/Mum/2024 in ITA No. 5143/MUM/2024 (AY: 2016-17)
C.O. No. 258/Mum/2024 in ITA No. 5142/MUM/2024 (AY: 2015-16)

M/s JSW Steel Coated Products Limited, JSW Centre, BandraKurla Complex, Bandra East, Mumbai-400051. [PAN:AACCM3988L]	Vs	DCIT Circle- 5(2) (1), Mumbai, Room No. 571, 5th Floor, AayakarBhavan, M.K. Road, Mumbai – 400020.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Rakesh Joshi, CA
Revenue by	Ms. NeenaJeph, CIT-DR & Shri BhagirathRamawant, Sr. DR
Date of Institution	02.10.2024
Date of hearing	22.12.2025
Date of pronouncement	30.01.2026

Order under section 254 (1) of Income Tax Act

PER PAWAN SINGH JUDICIAL MEMBER;

1. These two appeals by Revenue and cross-objections therein by assessee are directed against the order of ld. CIT(A) both dated 05.08.2024 for assessment year (AY) 2015-16 and 2016-17. In both the appeals, the revenue has raised certain common grounds of appeal, certain facts in both the years are common, the assessee in its Cross Objections have also raised common grounds, thus, with the consent of parties both the appeals and cross objections filed by assessee are clubbed, heard together and are decided by common order. For

appreciation of fact, facts in AY 2016-17 is treated as lead case. The Revenue in its appeal in ITA No. 5143/M/2024 has raised following grounds of appeal:-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the adjustment on inter-unit transfer of power from captive power plant of Rs. 74,55,05,907/-?

2. Whether on the facts and circumstances of the case and in low, the Ld. CIT(A) is correct in relying on the decision of Hon'ble Supreme Court in the case of CIT v. Jindal Steel and Power Limited (C. A. No. 13771 of 2015), when the case of the assessee pertains to AY 2015-16 and therefore the judgments of the Hon'ble Supreme Court for years prior to the introduction of Section 80A(6) vide Finance Act.2009 and the amendments in Section 80A(6) and sec 80-LA(8) vide Finance Act, 2012 are not applicable to the facts of the assessee?

3. Whether on the facts and circumstances of the case and in low, the Ld. CIT(A) is correct in relying on the decision of Hon'ble Supreme Court in the case of CIT v. Jindal Steel and Power Limited (C. A. No. 13771 of 2015), when the Hon'ble Supreme Court has clearly stated that 33. Before parting with this issue, we may mention that reliance placed by Mr. Rupesh Kumar, learned counsel for the revenue on the definition of the expression "market value" as defined in the explanation below sub-section (6) of section 80 A of the Act is totally misplaced Inasmuch as sub-section (6) was inserted in the statute with effect from 1-4-2009 whereas in the present case we are dealing with the assessment year 2001-2002 when this provision was note even borne.", hence, the decision of the Hon'ble Supreme Court on what should be taken as Market Value for transactions covered under Section 801A is clearly applicable only to the years prior to the introduction of Section 80A(6) of the Income Tax Act, vide Finance Act, 2009?

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)is correct in not appreciating the fact and position of law that comparability of the specified domestic transaction (SDT) with uncontrolled transaction has to be established in terms of parameters contained in Rule 108(2), by which the price charged by a power generating company cannot be compared to the price of a Distributor, more so since the Functions performed, Assets employed and Risks assumed (FAR) are entirely different?

5. Whether on the facts and circumstances of the case and in low, the Ld. CIT/A)is correct in not appreciating the fact that the assessee has adopted the price charged by a power distributing company (MSEDCL) to its non-eligible unit as comparable transaction and that the margin earned by the power distributor for the functions performed, assets employed and risks assumed by it are embedded in the said price, as against same, the assessee does not perform any function on account of power distribution nor does it employ any huge asset

relating to distribution nor does it assume any risk connected with distribution and therefore. adoption of the price charged by a distributor as comparable for the price charged by the assessee which is generator is not correct, as the assessee would be attributed with cost and profits on account of distributions activity, which it has not performed?

6. Whether on the facts and circumstances of the case and in low, the Ld. CIT(A) is correct in not appreciating the following facts and position of low that the power consuming unit cannot be taken as tested party for choosing the comparable as done by the assessee, but only the power generating unit can be taken as tested party for choosing the matching FAR comparable:

a. The object of section 801A is to quantify the profits and gains derived by an undertaking that is engaged in the eligible activity of power generation.

b. The SDT for which ALP is required to be determined is the 'supply of power by the eligible power generation unit".

c. The method chosen to determine the ALP as well as the choice of tested party should be such as to arrive at the best possible approximation of the profits of such eligible power generation unit.

d. In view of the above, the power generating unit alone should be considered as the tested party and the FAR of the power generating unit which has a direct impact in the quantum of SDT, should be given precedence over the FAR of the power consuming unit for choosing the matching FAR comparable.

e. Only when the FAR of the power generating unit is tested against a comparable transaction having a similar FAR, will we be able to reach the correct profitability of the power generation activity, only then the object of 801A will be achieved through the mechanism of TP provisions which was the entire object of enacting the provisions relating to SDT

f. Looking at the commencing phrase of section 801A(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..... and definition of 'market value in Explanation (i) of section 801A(8) market value means (1) the price that such goods or services would ordinarily fetch in the open market", what is to be seen and tested with comparable is the price that the electricity generated by the eligible unit would ordinarily fetch in the open market if sold and not the rate at which non-eligible unit could procure the electricity in the open market and therefore, only the eligible unit alone can be taken as tested party and its power rate has to be compared with power sale rate of the matching FAR comparable whose functional activity is power generation.

g. The tested party in the case of SDT has to be the person performing the economic activity that is entitled for the deduction le. the power generating unit.

7. Whether on the facts and circumstances of the case and in low, the Ld. CIT(A)is correct in not appreciating the purport of the Explanatory Memorandum to Finance Bill 2012 which introduced SDT and the provisions relating to SDT were enacted so that the mechanism provided under the Transfer Pricing provision could be applied in respect of domestic transactions as suggested by the Hon'ble Supreme Court in the case of CIT Vs Glaxo Smithkline Asia (P) Ltd ((TS-47-SC-2010-TP).

8. Whether on the facts and circumstances of the case and in low, the Ld. CIT(A) is correct in not recognizing the principles laid down by the Hon'ble Kolkata High Court in the case of CIT VS (TC Ltd (2015) 64 toxmann.com 214 which clearly ruled that the rate at which electricity was purchased from Power Distributor by non-eligible unit of the assessee can by no means be the market rate at which the power plant of the assessee could have sold its production in the open market, especially considering the amendments in the Act from AY 2013-147

9. On the facts and circumstances of the case and in low, the Ld. CIT(A) has erred in deleting the addition of Rs.3,31.18.164/- made on account of Capitul Creditors Written Back which is Income as per the provisions of section 41(1) as they were related to the liabilities which pertained to the assets capitalized by the assessee and the assessee had claimed allowance/deduction in the form of deprecation on these capital assets.

10. On the facts and circumstances of the case and in low, the Ld. CIT(A) has erred in directing that the addition made under section 14A read with Rule BD should be recomputed at the rate of 0.5% of average value of only those investments from which the exempt income is earned during the year under consideration which is clearly not in accordance with the provisions of section 144 and the judgment of the Hon'ble Supreme Court in Maxopp Investment Ltd. vs. CIT (2018) 402 ITR 640

13. On the facts and circumstances of the case and in law, the id. CIT(A) has erred in deleting the addition made under section 14A r.w. 115 disregarding the provisions of section 115/8(2) rw. Explanation-1 r.w. clause f of which requires any expenditure in relation to the exempt income also to be taken into consideration while computing the book profit under section 115/8.

12. The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AD.

13. The appellant craves leave to add, amend or alter all or any of the grounds of appeal"

2. On receipt of notice of appeal, the assessee has filed its CO by raising following grounds of appeal:-

> *"1. On the facts and circumstances of the case as well as in Law, the CIT(A) has erred in confirming the action of the Learned Assessing Officer in passing the assessment order u/s. 143(3) r.w.s. 144C(1) of the Income Tax Act, 1961, which is time barred as per the provision of the Act, therefore, the impugned assessment order is bad in law and required to be quashed.*
>
> *2. The respondent craves leave to add, amend, alter or delete the said ground of appeal."*

3. Rival submissions of both the parties have been heard and record perused. At the outset of hearing, the learned Authorised Representative (ld. AR) of the assessee submits that all the grounds of appeal raised by Revenue in its appeal is covered by various decisions either in assessees own case or by latest decision of Special Bench in Aditya Birla Nuvo Limited Vs Dy CIT in ITA No. 563/M/2018 dated 18.09.2025. Ground no. 1 to 8 in Revenue's appeal relates to deleting the addition of adjustment on inter-unit transfer of power from captive power plant. The ld. AR of the assessee submits that all these grounds of appeal is covered by the recent decision of third member in Aditya Birla Nuvo Ltd. (supra), wherein all the objections of revenue which has been raised in various grounds of appeal has been considered by Special Bench of Tribunal,copy of decision of third member is placed on record. The ld AR of the assessee submits that all earlier decision on the issue has been considered by ld CIT(A) while allowing relief to the assessee and held that price at which assessee purchased power from distribution license from a Govt. Company (JUBNL in said case) can be applied as a valid CUP for determining Arm's Length Price (ALP) of sale / supply of power by captive power plant to its other

unit. The ld. AR of the assessee submits that decision of Special Bench is squarely applicable on the facts of the present case.

4. On the other hand, the learned Commissioner of Income Tax - Departmental Representative (ld. CIT-DR) for the Revenue supported the order of assessing officer. To support of her submissions, the ld CIT-DR for the revenue relied on the decision of Hyderabad Tribunal in Sangi Industries Limited Vs DCIT in ITA (TP) No.104/Hyd/2022 dated 23.01.2025.

5. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that facts relating the adjustment of account of inter transfer of power from captive power plant adjustmentare that during financial year 2012-13, pursuant to the scheme of arrangement and amalgamation approved by Bombay High Court under section 391to 394 of Companies Act, Tarapur Unit JSW Steel Limited was transferred to assessee. At the time of transfer of Tarapur unit of JSW Stell Limited consist of manufacturing unit and a Captive Power Plant (CPP). As CPP unit of Tarapur unit was availing tax holiday benefit under section 80IA(8), the assessee began availing tax holiday benefit. During the year under consideration Tarapur unit supplied power to assessees Stell manufacturing unit and excess power that was not consumed captively by steel unit was sold to Maharashtra State Electricity Distribution Company (MSEDCL). The justify the specified transaction with its group company, the assessee in its transfer pricing study report the assessee adopted 'other method' as appropriate method and have adopted the tariff rate at which it can purchase electricity from MSEDCL as open market value in term of section 80IA(8). The assessee has shown (sold) power to its

associated company (AE) @ Rs.7.01/- per unit from 01.04.2015 to 31.05.2015 (total unit 2,73,51,880) and @ Rs. 7.21/- per unit from 01.06.2015 till 31.03.2016 (total unit 12,13,56,2950).The AO/TPO disregarded the contention of the assessee. The TPO was of the view that method adopted by the assessee was not appropriate. The TPO applied rate of per unit @ Rs 2.16/- per unit for whole of the year and suggested adjustment of Rs. 74.55 Crore. The TPO while suggesting the adjustment followed the principles laid down by Calcutta High Court in ITC Limited in Tax Appeal No. 426 of 2006. The ld. CIT(A) deleted the addition by referring the decision of Jurisdictional Hogh Court in Reliance Industries Limited (102 taxmann.com 372 Bom), wherein it was held that market value to be considered as the rate at which power to be supplied to a consumer by State Electricity Board (SEB). It was also held Hon'ble Jurisdictional High Court also considered the decision of Calcutta High Court in ITC Limited (supra) and not followed it, rather relied on the decision of Gujarat High Court in PCIT vs Gujarat Alkalies and Chemical Limited (2017) 395 ITR 247, ACIT Vs Pragati Glass Work Private Limted (Tax Appeal No, 1646 of 2010) and Chhattisgarh High Court in CIT Vs Godawari Power & Ispat Limited (2014) 42 taxmann.com 551 (Chg). The ld CIT(A) also relied on the decision of Hon'ble Apex Court in CIT Vs Jindal Steel and Power Limited in Civil Appeal No. 13771 of 2015, wherein it was held that value of power supplied by appellant to its industrial unit should be computed by considering the rate at which SEB supplied power to consumers in open market and not comparing it with rate of power when sold by appellant to SEB. The ld CIT(A) held that arm's length price (ALP) determined by TPO is not justified and held that tariff rate at which

the non-eligible units can procure power from Electricity Bord was the most appropriate and comparable rates to benchmark the transfer of power by CPP to other non-eligible unit. The ld CIT(A) finally concluded that benchmarking exercise conducted by the assessee is appropriate and reasonable and directed to delete the adjustment.

6. We find that Third Member (Special Bench) of Mumbai Tribunal in Aditya Birla Nuvo Ltd. vs DCIT in ITA No. 563/M/2018 on similar issue passed the following order:

"27. I have carefully considered the exhaustive submissions made by the parties and perused the materials on record. I have also gone through the respective orders proposed by the learned Members constituting the Division Bench in respect of ground no. 7, relating to the issue of the quantum of deduction allowable to the assessee u/s. 80IA of the Act. I have also applied my mind to the catena of judicial precedents cited before me. As far as the factual position relating to the issue in dispute is concerned, there is no dispute that the assessee has set up a captive power plant known as 'Rayon CPP-2' for generation and supply of power to its manufacturing unit-Rayon Plant. The CPP undoubtedly is the eligible business of the assessee for the purpose of section 80IA of the Act. Even, the department has no quarrel on this aspect. Further, there is no dispute between the assessee and the department that the transaction relating to sale/purchase of power between CPP-2 and Rayon Plant qualifies as SDT u/s. 92BA of the Act. Even, the assessee had undertaken a benchmarking analysis of the SDT. Since, in the year under consideration, the Rayon Plant had also purchased power from a State owned distribution licensee at Rs.6.62 per unit, the said rate has been applied as CUP to determine the ALP of the sale of power by CPP to Rayon Plant.

28. However, according to the TPO, the distribution licensee being functionally different from a power generating entity, the price charged by it cannot be compared to the price charged by a power generating company. Thus, the TPO has applied the per unit rate of Rs.2.52/- at which the distribution licensee purchases power from power generation companies. Thus, the issue arising for consideration is-what should be the ALP of sale/supply of power by CPP to Rayon Plant?'.

29. Before I proceed to deal with the issue, it needs to be mentioned that if one looks at the legislative history of sub section (8) of section 80IA of the Act, it can be seen, initially, as per the said provision 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 is not corresponding to the market value of such goods or services, then the market value of such goods or services can be considered for allowing deduction u/s. 80IA of the Act. Subsequently, Explanation under sub section (8) of section 80IA of the Act was introduced by Finance Act, 2001 w.e.f. 01.04.2002, which defines the market value in relation to any goods or services to mean the price that such goods or services would ordinarily fetch in the open market. However, the said explanation was substituted by Finance Act, 2012 w.e.f. 01.04.2013 with the following explanation:

> *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*

30. As could be seen from a reading of the said Explanation, clause (i) is verbatim same to the earlier Explanation. What is new is clause (ii), which provides that in case of SDT, the ALP in terms with section 92F(ii) would substitute the market value of goods or services transferred to the Associated Enterprise. At this stage, I must observe, a holistic reading of Explanation under sub section (8) of section 80IA of the Act would make it clear that clause (i) and clause (ii) operate in different situations. When the transaction between the related parties is in the nature of SDT coming within the ambit of section 92BA of the Act and is above a particular threshold limit, in that case, clause (ii) would be applicable and in all other cases clause (i) of Explanation would apply.

31. Having said that, it is now necessary to look into the aspect as to what should be the ALP of the SDT relating to sale of power by CPP to Rayon Plant. As stated earlier, clause (ii) to Explanation under sub section (8) of section 80IA of the Act refers to the ALP as defined in clause (ii) of section 92F of the Act in respect of SDT. Section 92F(ii) of the Act defines ALP as under:

> ***Definitions of certain terms relevant to computation of arm's length price, etc.***
>
> ***92F.*** *In sections 92, 92A, 92B, 92C, 92D and 92E, unless the context otherwise requires,—*
>
> .....
>
> *i)*
>
> *"arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled*

ii) conditions;

32. The definition of ALP, as reproduced above, speaks of two conditions. Firstly, the transaction must be between two unrelated parties and secondly, such transaction must be in uncontrolled conditions. In the facts of the present appeal, undisputedly, the Rayon Plant has purchased power from the distribution licensee at Rs.6.62 per unit. The assessee has applied the said price as CUP to benchmark the sale of power by CPP to Rayon plant. At this stage, it needs to be noted that section 92C of the Act prescribes the method for computation of ALP. Whereas, Rule 10B prescribes the mode and manner of computation of ALP under different methods. Undisputedly, the assessee has applied CUP method to determine the ALP. According to the TPO, the assessee, being a power generating company, the cost at which the distribution company supplies power to the consumer cannot be taken as ALP for sale of power by the generating company. Even, in course of hearing, learned CIT(DR) has argued in similar line. According to ld. DR, functions performed, assets employed and risk undertaken by a distribution company being totally different from a power generating company, the cost at which the distribution company sales power to consumers cannot be compared with the cost at which the distribution company purchases power from a power generating company. According to the Revenue, the rate at which the power generating company supplies power to a distribution company has to be taken as ALP, as the functions of the assessee are similar to that of a power generating company.

33. Keeping in perspective the aforesaid stand taken by the Revenue, it is necessary to look into the position of a power generating company which sells supply to a distribution licensee and that of a CPP under the Indian Electricity Act, 2003. As per section 2(28) of Electricity Act,2003, "generating company" means any company or body corporate or association or body of individuals, which owns or operates or maintains a generating station. Section 2(30) of the Electricity Act defines "generating station" or "station" to mean any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station. Whereas, "Captive generating plant" has been defined u/s. 2(8) of the Electricity Act to mean a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association. Section 2(17) defines "distribution licensee" to mean a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply. "Distribution system" has been defined u/s.2(19)

of Electricity Act to mean the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers. Section 7 of the Electricity Act provides that any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73. Whereas, section 8 of Electricity Act provides for Hydro-electric generation which can only be set up with concurrence of the competent authority and must involve capital expenditure exceeding the limit as may be fixed by the Central Government through Notification. Section 9 of the Electricity Act provides that notwithstanding anything contained in the Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines. The said provision provides that where the supply of electricity from the captive generating plant is through the grid, it shall be regulated in the same manner as the generating station of a generating company. However, no licence shall be required for supply of electricity generated from a captive generating plant to any licencee or a consumer, subject to the regulations made under sub section (2) of section 40. Further, subsection (2) of section 9 provides that every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use, subject to the availability of adequate transfer facility. Section 10 of Electricity Act prescribes the duties of generating companies other than captive power plants. Whereas, section 11 empowers the appropriate Government to issue direction to generating companies in the matter of generation and supply of electricity. Section 14 empowers the regulatory commission to grant license for transmission of electricity or to distribute electricity or to undertake trading in electricity. Section 42 of the Electricity Act prescribes the duties of distribution licensee and open access. As per the said provision, while it is the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in the Act, a captive power generating plant shall have open access only on payment of wheeling charge and surcharge. Sections 61 and 62 of the Electricity Act empowers the Regulatory Commission to determine and prescribe tariff both in case of supply of power by generating company to distribution licensee and in case of a distribution licensee to the consumers. However, the captive power generating units have been kept out of all such control and regulation under the Electricity Act. Section 86 of the Electricity Act empowers the State Commission to determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State.

34. The purpose of dealing in detail with the various provisions under the Electricity Act is to demonstrate that while the power generating companies, who have to sale/supply power to the distribution licensees, are fettered with various

rules/regulations/control under the provisions of the Electricity Act, the captive power generation plants have been purposefully kept out of all such control and regulatory measures. In terms with section 9 of the Electricity Act, 2003, the captive power plants have been given the right of open access for carrying electricity from the captive generating plant to the destination for own use, of course, only on payment of wheeling charge. In other words, the provisions under the Electricity Act make it clear that the similarity between a power generating plant and captive power plant is only to the limited extent of generation of power and the similarity ends there. Under the Electricity Act itself captive power generating plant is treated differently than a generating company. That being the position under the Electricity Act, by no stretch of imagination functions performed, assets employed and risk undertaken by a power generating company which sales/supplies power to a distribution licensee for ultimate supply/sale of power to the consumers cannot be equated with a small captive generation plant.

Rule 10B(2) prescribes the factors for comparability analysis of either goods or services in relation to an international transaction or SDT with an uncontrolled transaction. The factors which needs to be considered are :

> *(i) the specific characteristics of the property transferred or services provided in both the transaction;*
>
> *(ii)the functions performed, assets employed and risk assumed, by the respective parties to the transactions;*
>
> *(iii)the contractual terms of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions;*
>
> *(iv)conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail.*

35. If we apply the parameters of Rule 10B(2), it can be seen that setting up of a power generation plant for bulk supply of electricity is capital intensive and requires huge investment. Whereas, the investment made by a captive power generating plant is minuscule in comparison. While the power generating company is subject to all regulatory measures under the Electricity Act, the captive power generating plant has not been put under such restrictions. Thus, in my opinion, a captive power plant cannot be equated with a bulk power generating company, either in functionality or in employment of assets or even on account of risk undertaken, as the power generated by a captive power plant is for own captive consumption, hence, with minimal risk. In such a scenario, what can be considered for comparability, analysis is a transaction with sufficient degree of similarity.

36. Before us, the learned DR has put much stress on section 80A(6) of the Act to emphasise that due to its overriding effect, it will override even the Explanation

u/s. 80IA(8) of the Act. In this context, he has submitted that as per Explanation u/s.80A(6) of the Act, there is no 'or' between various clauses, hence, the conditions would apply cumulatively. He has submitted that as per clause (i) to Explanation u/s. 80A(6), the market value of goods or services in open market conditions subject to statutory or regulatory consideration, if any, has to be considered. Referring to clause (iii) of Explanation u/s. 80A(6) of the Act, he has further submitted that in respect of SDT, the ALP in terms with section 92F(ii) will apply. Thus, according to him, clause (i) and (iii) to Explanation u/s. 80A(6) of the Act, being provisions having overriding effect, would get precedence over any other provisions under the Act, including Explanation u/s. 80IA(8) of the Act.

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

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

39. In the facts of the present appeal, admittedly, the Rayon Plant had purchased electricity from the State owned distribution licensee at Rs.6.62 per unit. Had the Rayon Plant not purchased power from CPP to meet its requirement, it would have purchased power from the distribution licencee at the very same rate of Rs.6.62 per unit. Therefore, there cannot be any doubt that the rate at which the Rayon Plant purchased power from the distribution licensee can be applied as a

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

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

40. Though, Hon'ble Delhi High Court acknowledged the fact that the tariff charged by distribution companies are regulated, however, the Hon'ble High Court has held that there being sufficient degree of similarity between the two transactions it can be taken as CUP for determining ALP. More so, when the rate at which the distribution licensee supplies power is not exclusively fixed for a particular consumer but is applicable to a large segment of consumers. It will be relevant to observe, the aforesaid judgment of the Hon'ble Delhi High Court is after considering the amendment to Explanation u/s. 80IA(8) of the Act effective from 01.04.2013 and Rule 10B as well. In fact, in the aforesaid judgment, the Hon'ble High Court, while coming to its conclusion, has applied the ratio laid down by the Hon'ble Supreme Court in case of CIT vs. Jindal Steel & Power Ltd. [2023] 157 taxmann.com 207 (SC).

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

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

> *(b) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal was justified in law in not considering the provisions of Income Tax Act, 1961 where it has been mandated in cases of transaction between eligible units and non-eligible units of an undertaking, in explanation (iii) of sub*

section (6) of Section 80A, that the expression "market value" in relation to any goods or services sold, supplied or acquired means the "arm's length price" as defined in clause (ii) of section 92F of such goods or services, if it is a specified domestic transactions referred to in section 92BA?

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

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

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

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

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

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

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

19. The learned tribunal in the case of Star Paper Mills Limited Versus DCIT Circle 4 Kolkata 5 held that where the assessee company, engaged in business of manufacturing and sale of paper, had set up Captive Power Plant (CPP) to meet its requirements of its paper manufacturing units which also availed power from State Electricity Board, the said transaction being in nature of specified domestic transaction, transfer price of power supplied by CPP was to be bench marked at annual average of landed cost at which power was being purchased by manufacturing units from State Electricity Board. The revenue carried the matter on appeal before this court and the appeal filed by the revenue was dismissed and the said decision is reported in (2025) 172 taxman.com 391 (Kolkata). In the said appeal, the following two substantial questions of law were taken up for consideration:-

> *"(a) WHETHER in facts of the case and in law, the Hon'ble ITAT is justified upholding the internal CUP applied by the assessee to benchmark the transaction (sale of power) to its AE, as well as computation of deduction under section 80-IA of the Act, whereas as per explanation to section 80-IA(8) of the Act, "market value" in relation to any goods or services, means (a) the price that such goods or services would ordinarily fetch in the open market; or (b) the arm's length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA?*
>
> *b) WHETHER in facts of the case and in law, the Hon'ble ITAT is justified in not appreciating the finding of the TPO that the assessee's generating unit cannot as such claim any benefit under section 80IA of the Income Tax Act computed on the basis of rates charged by the distribution licensee from the consumer. The benefit can only be claimed on the basis of the rates fixed by the tariff regulation commission for sale of electricity by the generating companies to the distribution company?*

20. The Court took note of the decision of the Hon'ble Supreme Courtin CIT Versus Jindal Steel and Power Limited 6. In the said case, the assessee having found that the electricity supplied by the State Electricity Board was inadequate and to meet the requirements of its industrial units, set up captive power generating units to supply electricity to its industrial units which was done at a particular rate. The surplus power if any, generated was to be wheeled out to the electricity board grid pursuant to an agreement between the State Electricity Board and the assessee at a rate fixed by the State Electricity Board. The question which arose of consideration

is as to the quantum of deduction which the assessee would be entitled to claim under Section 80IA of the Act. The assessing officer held value of the electricity should be computed based on the rate fixed by the State Electricity Board for the electricity which is purchased by the assessee. The Dispute Resolution Panel (DRP affirmed the view taken by the assessing officer and the matter was challenged before the tribunal. The tribunal followed the decision in the assessee's own case for an earlier assessment year which order had become final as the department did not prefer any appeal under Section 260A of the Act. In the batch of cases, in Jindal Steel and Power one of the appeals was an appeal filed by the assessee namely ITC Limited against the judgment of the Division Bench ofthis court in Commissioner of Income Tax Versus ITC Limited (supra) in CA No. 9920 of 2016 and this appeal was allowed by the Hon'ble Supreme Court by order dated 07.12.2023 and the Hon'ble Supreme Court held as follows:-

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

21. The Hon'ble Supreme Court after taking note of the relevant provisions of the Income Tax Act, and in particular Section 80IA held that the market value of the power supplied by State Electricity Board to the Industrial consumers should be construed to be the market value of electricity and it should not be compared with the rate of power sold to or supply to the State Electricity Board since the rate of power to a supplier cannot be the market rate of power sold to a consumer in the open market. It was further held that the State Electricity Boards rate when it supplies power to the consumer have to be taken as market value for computing the deduction under Section 80IA of the Act. Thus, applying the decision of the Hon'ble Supreme Court in Jindal Steel and Power and in the light of the reasoning

given in the preceding paragraphs, we hold that the learned tribunal rightly dismissed the appeals filed by the revenue.

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

45. At this stage, I must observe, learned DR has heavily relied upon a decision of ITAT, Hyderabad Bench in case of Sanghi Industries Ltd. Vs DCIT (supra) to contend that the rate at which the generating company supplies power to the distribution licensee will be the ALP. Upon carefully going through the aforesaid decision of the coordinate Bench I found it to be factually distinguishable. The Bench has recorded a finding of fact that the CPP had sold surplus electricity to 14 individuals at an average rate of Rs. 2.97/- per unit. Whereas, in the TP study it has adopted the rate of Rs. 7.85/- per unit. In contrast, in the present case, CPP has sold power only to Rayon Plant for captive consumption at Rs. 6.62/- per unit and to no other party at any other rate. As against the aforesaid decision cited by learned DR, there are decisions of Hon'ble Delhi High Court in case of PCIT Vs DCM Shriram Ltd.(supra) and that of Hon'ble Calcutta High Court in case of PCIT Vs Rungta Mines Ltd. as well as plethora of other decisions of ITAT favorable to assessee, which are directly on the issue and have been rendered after considering all the relevant provisions of the Act, including, sections 80A(6), 80IA(8) with amended explanation, 92F(ii), Rule 10B etc. Therefore, these decisions carrying precedent value cannot be lightly brushed aside by branding them as per incuriam or having been rendered sub silentio of certain relevant provisions, merely because they are against the revenue.

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

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

7. Thus, considering the decision of Third Member (Special bench) of the Mumbai Tribunal in Aditya Birla Nuvo Ltd. vs DCIT (supra), wherein all earlier decisions on this issue has been considered and held that price at which the assessee purchased power from the distribution licensee, i.e. (SEB) can be applied as a valid CUP for determining the ALP of sale/supply of power by the CPP, hence we do not find any infirmity in the order of ld CIT(A), which we affirm. So far as reliance on the case law in Sanghi Industries Limited (supra) by ld CIT-DR for the revenue, we find that the Hon'ble Third Member has already considered the said decision in para- 45 of the order and held that there is plethora of direct decision on the isuue. In the result, the ground No. 1 to 8 of appeal are dismissed.

8. Ground No. 9 relates to deleting the addition of Rs. 3.31 crores on account of capital creditors return back. The ld. AR of the assessee submits that this ground of appeal is also covered by the decision of Tribunal in assessees own case for A.Y. 20003-04 in ITA No. 923/Bang/2009.

9. On the other hand, CIT-DR for the Revenue supported the order of assessing officer.

10. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that the ld. AO made addition of Rs. 3.31 crores by taking view that assessee claimed allowance in the form of depreciation in respect of capital creditors written off. Such liability are no longer payable and thus written back during the year. Such written back amount of Rs. 3.31 Crore is covered by section 41(1) and liable to be treated as income of the year. On appeal, the ld. CIT(A) deleted the addition by taking view that on similar ground of appeal with regard to capital creditors written back has been decided in favour of assessee in assessee's holding company in A.Y. 2004-05 by ld. CIT(A) and on further appeal, the order of ld. CIT(A) is confirmed by Tribunal in ITA No. 923/Bang./2009. The ld. CIT(A) after referring relevant part of decision of Tribunal deleted the addition by taking view that Mumbai Tribunal in case of holding company of assessee has decided issue in its favour. On independent consideration of fact, we find that in assessee's holding company in appeal for A.Y. 2004-05, the co-ordinate bench of Mumbai Tribunal in ITA No. 923/Bang/2009 and 930/Bang/2009 passed the following order:

> *29. We have heard the rival submissions made by the parties and also considered the relevant finding given in the impugned orders. First of all it is seen that Assessing Officer's case is that provisions of section 41(1) are applicable because the assessee has claimed depreciation in the earlier years on the loan taken for acquisition or capital asset and for coming to this conclusion he has heavily relied upon the decision of Hon'ble Bombay High Court in the case of Nectar Beverages vs. DCIT (supra). This observation and finding of the Assessing Officer now stands negated by the judgment of Hon'ble Supreme Court in the case of Nectar Beverages vs. DCIT (supra) wherein the Apex Court has reversed the said decision*

of the Hon'ble Bombay High Court and observed that depreciation is neither a trading liability as referred to in section 41(1) nor the principal component of the borrowings for acquisition of a capital asset has not been allowed as an allowance or deduction in the earlier years and hence, any waiver thereof, does not constitute income under section 41(1). In any event an allowance of depreciation can in no way be related to waiver of a loan taken to purchase of the asset in question, since the transaction of borrowing of money for purchase of a capitalasset and the transaction of purchase of capital asset are themselves two independent transactions. This has been held so by the Hon'ble Supreme Court in the case of CIT vs. Tata Iron and Steel Company Ltd. (1998) 231 ITR 285 wherein it has been observed that cost of an asset and cost of raising money for purchase of the asset are two different and independent transactions. The relevant observation as appearing in the judgment reads as under;

> *"It is difficult to follow how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if the assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the cost of an asset and the cost of raising money for purchase of the asset are two different and independent transactions. Even if an asset is purchased with non-repayable subsidy received from the Government, the cost of the asset will be the price paid by the assessee for acquiring the asset..... The assessee may have raised the funds to purchase the asset by borrowing but what the assessee has paid for it, is the price of the asset. That price cannot change by any event subsequent to the acquisition of the asset. The manner or mode of repayment of the loan has nothing to do with the cost of asset acquired by the assessee for the purpose of his business."*

Explanation 10 to section 43(1) will also not apply here as pleaded by the Ld. CIT D.R. before us, because it is applicable only where there is a subsidy or grant of reimbursement which is not the case here. Even otherwise also section 43(1) is applicable only in the year of purchase of machinery and in the present case the purchase of capital asset was not in the assessment year2004-05. Thus, we hold that firstly, section 41(1) does not apply to the facts of the present case as depreciation is neither a loss nor an expenditure as held by the Hon'ble Supreme Court in the case of Nectar Beverages Pvt. Ltd. (supra); and secondly, liability incurred by the assessee was utilized for the purchase of capital asset and therefore, under no circumstances it can be held to be a trading liability. Depreciation allowance has no connection with waiver of the capital loans in question and hence would not attract section 41(1). By way of additional grounds the Ld. D.R. has sought to contend that in view of the decision of Hon'ble Bombay High Court in the case of Solid Containers Ltd. 308 ITR 407 the waiver of a loan is to be reckoned as in the nature of trading liabilities and therefore, it is taxable under section 41(1). As discussed in detail in the earlier part of the order, here it is not the case of the Assessing Officer that the principal amount of loan taken by the assessee was for any trading account, albeit it was for the purchase of a

capital asset which has never been allowed as a deduction. The loan taken for an acquisition of a capital asset does not constitute trading liabilities which has been allowed as a deduction in earlier years and any kind of waiver thereof would fall within the deeming fiction of section 41(1). We have already clarified that the amount which can be subjected to tax under section 41(1) can only be those amounts or receipts which have been allowed as deduction in the computation of income in the earlier years and if this primary condition is not satisfied, then there cannot be any addition under this section. In the case of Hon'ble Bombay High Court in Solid Containers (supra) the waiver of loan was taken for trading activity and the assessee has credited such a waiver to the profit & loss account and claimed it to be a capital receipt. Even in the case of Hon'ble Supreme Court to which Hon'ble Bombay HighCourt has relied upon in the case of CIT vs. TVS Iyengar& Sons Ltd, reported in 222 ITR 344, it was found that the loan/advance constituted a trading liability or was taken under trading account therefore, the ratio of the said decisions would not be applicable on the loan transaction which has been taken on capital account, even if it is for the business purpose. The Hon'ble Bombay High Court in a subsequent decision in the case of CIT vs. Softworks Computers Pvt. Ltd. Reported in 354 ITR 16, has held that loan taken for acquiring a capital asset when subsequently waived is not chargeable to tax. The relevant observation of the Hon'ble High Court wherein they had discussed the ratio of Solid Container Ltd. (supra) and the earlier decision of the Hon'ble Bombay High Court in the case of Mahindra & Mahindra is reproduced as under:

> *7. We find that the decision of this court in the matter of Solid Containers Ltd. (supra) has also considered the earlier decision in the matter of Mahindra and Mahindra Ltd. (supra) and distinguished the same by holding that in that case the loan was given for purchase of capital assets unlike in the case of Solid Containers Ltd. (supra) where waiver was of a loan taken for trading activity and thus considered to be of a revenue nature. In the present case, the amount which was advanced as a loan to the respondent-assessee was for the purposes of relocating its office premises. The loan taken was utilized for the purposes of acquiring an office at Godrej Soap Complex, Vikroli, Mumbai. Therefore, the loan in the present fact was taken for acquisition of capital asset and not for the purposes of trading activity as in the case of Solid Containers Ltd. (supra). The present case is, therefore, covered in favour of the respondent-assessee by the decision of this court in the matter of Mahindra and Mahindra Ltd. (supra)."*

Therefore the plea raised by the Revenue through additional ground cannot be upheld and same is rejected.

11. Considering the decision of Tribunal in assessee's own case on similar set of fact, we do not find in the merit in the grounds of appeal raised by revenue. In the result, ground no. 9 of the appeal is dismissed.

12. Ground no. 10 relates to disallowance under section 14A and ground no. 11 relates to adding the disallowance of section 14A to book profit under section 115JB. The ld. AR of the assessee submits that these grounds of appeal are also covered by the decision of Special Bench of Delhi Tribunal in ACIT vs Vireet Investment (P) Ltd. 58 ITR 313.

13. On the other hand, ld. CIT-DR for the Revenue supported the order oflower authorities.

14. We have considered the rival submissions of both the parties and haves gone through the orders of lower authorities carefully. We find that during the year under consideration, the assessee has shown / earned dividend income of Rs. 87,53,540/-. The assessing officer invoked the provision of Rule 8D and computed disallowance under section 14A of Rs. 23,89,750/- and also added to the book profit under section 115JB. Before ld. CIT(A), the assessee submitted that assessing officer mad disallowance without recording dissatisfaction on no disallowance made by assessee. The assessee also stated that only those investments which yielded exempt income is to be considered for making disallowance under section 14A. The ld. CIT(A) by following the decision of Special Bench of Delhi in Vireet Investment (P) Ltd. (supra) directed the AO to re-compute the disallowance @ 0.5% of average value of only those investments which yielded exempt income during the year and allow part relief to the assessee. The ld. CIT(A) also directed the AO that as per decision of Delhi Tribunal in Vireet Investment (P) Ltd. (supra) that disallowance computed under section 14A cannot be added while computing book profit under section 115JB. Before us, the ld. AR of the assessee vehemently relied upon the

decision of Vireet Investment (P) Ltd. (supra). On independent consideration of fact, we find that ratio of decision of Vireet Investment (P) Ltd. is squarely applicable on the facts of the present case. Thus, we do not find any merit in ground no. 10 & 11 of the Revenue's appeal. In the result, appeal of the Revenue is dismissed.

15. Considering the fact that we have dismissed the appeal of Revenue on merit, therefore, specific adjudication on the grounds raised by assessee in its cross-objection have become infructuous. In the result, C.O. filed by assessee is dismissed as infructuous.

16. In the result, both the appeals of revenue for both the years are dismissed and C.O. filed by the assessee are treated as infructuous and dismissed as such.

Order pronounced in open court on 30/01/2026

Sd/-	Sd/-
GIRISH AGRAWAL **ACCOUNTANT MEMBER**	**PAWAN SINGH** **JUDICIAL MEMBER**

MUMBAI, Dated: 30/01/2026
Biswajit

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By order

Assistant Registrar
ITAT, Mumbai