

**IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRIKHETTRA MOHAN ROY, ACCOUNTANT MEMBER**

**ITA No. 138/Nag/2025, AY 2017-18
ITA No. 139/Nag/2025, AY 2018-19
ITA No. 140/Nag/2025, AY 2019-20
ITA No. 141/Nag/2025, AY 2020-21**

Dy, CIT, Central Circle-2(2), Room no. 207, Aayakar Bhawan, Civil Lines Telangkhedi Road, Nagpur, 440001	Vs.	Gopani Iron and Power(India) Pvt. Ltd., Uttam House, 69, P.D., Mello Road, Carnac Bunder, Mumbai, Maharashtra-400009 PAN- AACCG0988N
(Appellant)		(Respondent)
Assessee by		Shri Prakash K Jotwani, Advocate
Revenue by		Shri Pankaj Kumar, CIT-DR
Date of Hearing		23.02.2026
Date of Pronouncement		27.03.2026

Order under section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This group of four appeals by Revenue are directed against the separate orders of CIT(A) all dated 27.12.2024 for Assessment Years 2017-18, 2018-19, 2020-21, 2021-22. In all appeals, facts are almost similar; the Revenue has raised similar grounds of appeal except variation of figure of adjustment on account of specified domestic transaction on account of sale of power of captive power plant. Thus, with the consent of both the parties all appeals were clubbed, heard together and are decided by common order to avoid the conflicting decision. For appreciation of facts, facts in Assessment Year 2017-18 is treated as lead case. The Revenue in appeal for

Assessment year 2017-18 in ITA No. 138/NAG/2025 has raised following grounds of appeal.

- i. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in the adjustment on inter-unit transfer of power from captive power plant of Rs. 28,22,44,096/-.*
- ii. *Whether on the facts and circumstances of the case and in law, 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 2017-18 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 80-1A(8) vide Finance Act, 2012 are not applicable to the facts of the assessee.*
- iii. *Whether on the facts and circumstances of the case and in law, 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 80A 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 not 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.*
- iv. *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 tha 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 (FAP) are entirely different?*
- v. *Whether on the facts and circumstances of the case and in law, the LE 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 costs and profits on account of distribution activity, which it has not performed?

- vi. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in not appreciating the following facts and position of law 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.*
- vii. *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.*
- viii. *The SDT for which ALP is required to be determined is the 'supply of power by the eligible power generation unit'.*
- ix. *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.*
- x. *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.*
- xi. *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 Section 801A will be achieved through the mechanism of TP provisions which was the entire object of enacting the provisions relating to SDT.*
- xii. *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 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.

- xiii. *The tested party in the case of SDT has to be the person performing the economic activity that is entitled for the deduction i.e. the power generating unit.*
- xiv. *Whether on the facts and circumstances of the case and in law, 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-20IOTP]?*
- xv. *Whether on the facts and circumstances of the case and in law, 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 ITC Ltd [2015] 64 taxmann.com 214 Power Distributor by non-eligible unit of the assessee can by no means be the which clearly ruled that the rate at which electricity was purchased from 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 A.Y.2013-14?*

2. Rival submissions of both the parties have been heard and record perused. At the outset of hearing, the Ld. Authorized Representative (Ld.AR) of the assessee submits that grounds of appeal raised by Revenue in all the orders are identical except variation deleting adjustment on account of inter-unit transfer of buyer from Captive Power Plant. In fact, the grounds of appeal raised by the revenue are covered by the decision of Hon'ble Supreme court in case of CIT Vs Jindal Steel and Power Ltd. in Civil Appeal No. 13771 of 2025 dated 06.12.2023. The Ld. CIT(A), while allowing relief to the assessee, followed the decision of Hon'ble

Apex Court. The Ld.AR while explaining the facts of his case, submits that Assessee Company is engaged in the business of manufacturing and trading across the power, steel and energy. The assessee is also having Captive Power Plant (CPP) for supplying electricity to its own industrial units. The assessee while following return of income of Assessment Year 2017-18 declared gross total income at Rs. 22.26 Crore. The assessee paid taxes on book profit of Rs. 23.28 Crore under Section 115JB. The assessee in its computation of claim deduction under Section 80-IA of Rs. 22.26 Crore, being first year of claim owing to the availability of eligible profits. The assessee in its transfer pricing study report adopted Comparable Uncontrolled Price(CUP) method for benchmarking the internal transfer of electricity from CPP to Sponge Iron/DRI manufacturing units. The assessee relied upon the tariff charged by the Maharashtra State Electricity Distribution Company Ltd. (MSEDCL). From April 2016 till October, 2016, the assessee adopted the rate at Rs. 7.21/- per unit and from November 2016-February 2017 the rate at Rs. 7.07/- per unit. The TPO (Transfer Pricing Officer) rejected the CUP method adopted by the assessee and applied the rate at which MSEDCL purchases power from independent generators at the rate of Rs. 3.79/- per unit and consequently proposed a downward adjustment of Rs. 28.22 Crore. The rate applied by the TPO does not reflect market realities or commercial comparables as required under law, for the reasons, viz; (i) the TPO rejected the assessee's benchmarking based on MSEDCL's industrial sale tariff on the basis that it reflects a distribution price and not appropriate for a power

generation unit. (ii) TPO held that the correct benchmarking should be the purchase price at which the distribution companies procured power from independent generators. (iii) the TPO adopted Rs. 3.79 per unit as the arm's length price instead of Rs. 7.07 to 7.21 per unit. (iv) The TPO relied upon Safe Harbor Rules under Rule 10THC and the Electricity Act, 2003, to support the use of regulated procurement rates over end-user sale tariffs. (v) the TPO was of the view that there was a functional difference between power generation and distribution in terms of functions, assets and risk making MSEDCL's sale tariff unsuitable for comparison. (vi) The TPO was of the view that industrial tariffs are inflated due to cross-subsidization and, therefore, do not reflect to market value. (vii) The TPO solely relied upon Calcutta High Court's decision in ITC Limited for assessment year 2002-03, which has been overruled by same High Court in later decision in PCIT Vs ITC Limited (2022) 138 taxmann.com 417 (Cal). The Assessing Officer accepted the TPO's findings without further examination and passed the final assessment order on 29.04.2021 by making an addition/adjustment of Rs. 28.22 Crore.

3. Before CIT(A), the assessee furnished detailed written submission on the issue raised in the appeal. The Ld. CIT(A) after considering the material available before him adjudicating the matter on its merit and by placing reliance on the judgment of Hon'ble Supreme Court in CIT (A) v. Jindal Steel & Power Limited (supra) wherein it was held that for the purpose of determining market value under Section 80-IA of the Act, the appropriate benchmark is the rate at which

electricity supplied by the Electricity Board to industrial consumers and not the rate at which power is procured from generating companies. The Ld. AR further submits that recently in Aditya Birla Nuvo Ltd. v. DCIT in ITA No. 563/Mum/2018 dated 18.09.2025, third Member Bench (Special Bench) wherein the similar issue was raised by the department. The Special Bench after considering the submission of rival parties and held that price at which assessee (industrial consumer) purchased power from State Distribution Company (GUVNL in that case) can be applied as a valid CUP for determining the arm's length price for sale/supply of power by the Captive Power Plant (CPP) to its other industrial units. The Ld. AR submits that he has placed on record the decision of third Member decision in Aditya Birla Nuvo Ltd v. DCIT (supra) and that latest decision of Mumbai Benches, Mumbai in Gandhi Special Tubes Limited v. ACIT in ITA No. 2421/Mum/2025 wherein the decision of third Member in Aditya Birla Nuvo Ltd. v. DCIT (supra) is followed.

4. The Id AR of the assessee submits that insertion of section 80A(6) was clarificatory in nature, it did not alter the substantive meaning of 'market value' as used in section 80IA(8), which continues to govern the basis of valuation of such transfers. The Hon'ble Supreme Court nowhere in the judgment suggests that the ratio laid down particularly in relation to determination of market value under section 80IA(8) would cease to apply to later years or would be overridden by the 2009 and 2012 amendments. In fact, Mumbai Tribunal in its recent decision in case of Aditya Birla Nuvo (supra) and in Gandhi Special Tubes

(supra) have followed the precedent of Jindal Steel and Reliance Industries and categorically held that State Electricity Boards represent a reliable and appropriate CUP for internal benchmarking. The benchmarking methodology adopted by assessee for determining the fair market value of power transferred from its captive power undertaking to its manufacturing unit is in full conformity with the scheme of section 92C of the Act r.w.r. Rule 10B of Income Tax Rules. Electricity is a standardized and fungible commodity, the characteristics of which remain constant regardless of whether it is supplied by a generator or distributed by the licensee. Therefore, the functional attributes of the entities have no bearing on the comparability of price for benchmarking purpose under the CUP method. The functional differences between a generator and a distributors are irrelevant in this context, as long as product laxity is identical, and tariff used is derived from a regulated, publicly available source and Rule 10B(2) of the Income Tax Rules does not mandate that the entities involved must be functionally identical or assume the same level of risk. The procedural compliance under SDT does not override or altered the substantive provisions of section 80IA(8), which continues to govern the principle of market value for internal transfers. The Explanation to section 80IA(8) provides two alternative method for determining market value, firstly, the price that the goods or services would ordinarily fetch in the open market, and secondly the arm's length price as defined in section 92F(ii) in case of a specified domestic transaction. The term "or" clearly provides that these alternatives are mutually exclusive and the

appellant was entitled to adopt either method. To strengthen his submissions, the Id AR of the assessee also relied on the following decisions;

- ❖ PCIT Vs Star Paper Mills in Tax Appeal No. 214 of 2024 (Calcutta HC),
- ❖ PCIT Vs DCM Shriram Limited (2015) 170 taxmann.com 631 Delhi,
- ❖ IVL Dhunseri Petrochem Industries Pvt Limited Vs DCIT in ITA No. 172/Kol/2024,
- ❖ CIT Vs Reliance Industries Limited (421 ITR 686 Bom),
- ❖ PCIT Vs Gujarat Alkalies and Chemical Limited (2017)395 ITR 247 (Guj),
- ❖ Shah Alloys Limited Vs DCIT in ITA No. 1417/Ahd/2019

5. On the other hand, the Id. Commissioner of Income Tax – Departmental Representative (Id. CIT-DR) for the reason supported the order of assessing officer/TPO. The d. CIT-DR submits that he may be given opportunity to file his written submission within four weeks from the date of hearing. The Id CIT-DR for the revenue was allowed to file his short and brief synopsis. After four weeks, the Id. CIT-DR for the revenue furnished his written submission running into more than twenty-five pages, though, he was directed to file short written synopsis. In the written submission, the Id. CIT-DR for the revenue contended that Id. CIT(A) allowed relief on the basis of decision of Hon'ble Supreme Court in Jindal Steel & Power Limited (supra). Reliance placed by Id. CIT(A) on such decision is misplaced. After the decision of Hon'ble Apex Court in Jindal Steel & Power Limited (supra), vide Finance Act, 2009, section 80A(6) was introduced with overriding powers over the section 80IA(8) and the definition of 'market value' was given more dimensions than the earlier existing one. Section 80A(6) was not the subject matter of interpretation in the decision of Supreme Court.

The Id. CIT-DR for the revenue by referring the definition of 'market value' prescribed in 80A(6) submitted that market value means the arm's length price as defined in clause (ii) of Section 92F and the same is to be determined as per the methods prescribed under Transfer Pricing Regulations. Section 80A(6) has overriding powers, therefore, the decision of Hon'ble Apex Court in Jindal Steel & Power Limited is not applicable. The rate at which power is purchased by the consuming unit from the Distribution Company (DC) cannot be compared to the rate at which power is sold by the Captive Power Plant (CPP) to the consuming unit. The CPP is different from that of the distribution company as far as functions performed, assets employed and risks assumed are concerned. The retail price at which power is sold to an end customer includes the profit on account of distribution functions and cannot be considered for the purpose of determining the profit which a power generating company, not performing any distribution function. If as proposed by the assessee, the retail price is considered as ALP for the SDT, it will amount to attribution of power generating company with a distributor's margin whereas the power generating company has neither performed the function nor does it have the wherewithal to do the same. It is not material as to whether buyer of power in the SDT is an end-user or not, the material fact is that the supplier of power in the comparable transaction cannot be a distributor so that no distribution mark-up gets attributed to the assessee as the assessee does not perform distribution function. It is more so as the profit of the eligible unit is to be tested and determined using transfer pricing

provisions for the purpose of deduction under section 80-IA, which is the mandate under section 92BA. The assessee has taken the rates by said distribution company (MSEDCL) as comparable and rates are benchmarked on their rate of sale of electricity. The said State-owned Electricity Distribution Companies (SEDC) cannot be taken as acceptable comparable for benchmarking as the profit of the CPP are issue in hand and comparable should be are ideally for the point of view of CPP. Thus, the better internal comparable would be rate at which CPP sells power to unrelated consumers directly. In absence of such rate, the rate at which the consumers purchased power from similar unrelated CPPs may be an internal comparable. In view of the provisions of sub-rule (2) & (3) of Rule 10B. A FAR analysis would show that the transactions of purchase of power from a CPP are different from a transaction of purchase of power from a distribution company. The cost of production of CPP is lesser. The adoption of CPPs sale rate of electricity equal to the power distributor's sale rate notionally leads to more than ordinary profits to the eligible unit claiming deduction and at the same time it leads to a lesser taxable profits in the hands of the non-eligible unit due to the notionally hiked cost of electricity for it, which is not the intention of the legislature. The intention of the legislature is to allow the deduction only to the extent of ordinary profits which was the reason by Hon'ble Apex Court in Glaxo Smith case and given advisory to the legislature to extend transfer pricing principles to such domestic transactions as well. The assessee has generated more than normal profits as compared to the average power purchase rate by

MSDECL from captive power generating unit. To support his view, the Id. CIT-DR also referred the decision of Mumbai Tribunal in Serdia Pharmaceuticals India Pvt. Ltd. vs ACIT 133 TTJ 0129. The Id. CIT-DR for the revenue contended that decision of Mumbai High Court in CIT vs Reliance Industries Ltd. has not reached finality as Special Leave Petition filed by the revenue is admitted by Hon'ble Supreme Court. The reliance placed by Id. AR for assessee in case of PCIT vs DCM Shriram, PCIT vs Star Paper Mills Ltd, PCIT vs Gujarat Alkalies & Alkalies & Chemicals Ltd., Shah Alloys Ltd. Vs DCIT, CIT vs Kanoria Chemicals & Industries Ltd. and PCIT vs Rungta Mines Ltd. are misplaced as facts of said cases are clearly distinguishable from the facts and legal framework governing the present appeal. None of these judgments dealt with benchmarking of SDT under arm's length price under section 92BA and 92C read with Rule 10B.

6. In the short rejoinder submission, the Ld. AR of the assessee submits that all the contentions raised by CIT-DR for the revenue has already been considered by Special Bench/ third member decision in Aditya Birla Nuvo Limited v. DCIT (supra) and as such the issue is squarely covered against the revenue.
7. We have considered the rival submissions and have gone through the orders of lower authorities accordingly. We have also deliberated on various case laws relied by the authorities. We find that the assessee while filing the return of income reported specified domestic transaction for sale of electricity from its Captive Power Plant to its other units. The assessee furnished its report in Transfer Pricing Report in Form 3CEB. The TPO while testing the arm's length

price of sale of power applied rate of electricity at Rs. 3.79/- per unit in place of rate adopted by assessee at Rs. 7.21/- per unit from April 2016 to October 2016, Rs. 7.13/- per unit from November 2016 to February, 2017. While applying the rate at Rs. 3.79/- per unit, the TPO proposed downward adjustment of Rs. 28.22 Crore. The TPO suggested such adjustment by rejecting CUP by taking view that MSEDCL's industrial sale tariff on the basis that it reflects a distribution price and not appropriate for a power generation unit. The correct benchmarking should be the purchase price at which the distribution companies procured power from independent generators. The TPO adopted Rs. 3.79 per unit as the arm's length price instead of Rs. 7.07 to 7.21 per unit. He also relied upon Safe Harbor Rules under Rule 10THC and the Electricity Act, 2003. The TPO was of the view that there was a functional difference between power generation and distribution in terms of functions, assets and risk assumed and held that industrial tariffs are inflated due to cross-subsidization and, therefore, do not reflect to market value. The TPO also relied upon Calcutta High Court's decision in ITC Limited (supra). We find that the Id CIT(A) allowed relied to the assessee on the basis of decision of Jindal Steel & Power Limited (supra).

8. The Hon'ble Apex Court in Jindal Steel & Power Limited (supra) held that the market value of the power supplied by State Electricity Board to the industrial consumer should be construed to be market value of electricity. It was also held that it should not be compared with the rate of power sold to or supplied to

State Electricity Board as the rate of power to a supplier cannot be a market rate of power sold to a consumer in the open market.

9. The Hon'ble Bombay High Court in CIT Vs Reliance Industries Limited also (supra) held that where assessee had set up a captive power generating unit and provided electricity to its another unit and claimed deduction under section 80-IA in respect of profits arising out of such activity, valuation of electricity provided to another unit should be at rate at which electricity distribution companies were allowed to supply electricity to consumers. Similar view was taken by Gujarat High Court in PCIT Vs Gujarat Alkalies & Chemicals (supra).
10. We also find that recently, the third Member Bench of Mumbai Tribunal in Aditya Birla Nuvo Limited (supra) on considering all such similar objections and submissions of revenue as raised before us, has held that price at which the assessee (industrial units) purchased power from the State Electricity Board can be applied as a valid CUP for determining the ALP of sale/supply of power by the CPP to its other unit. We find that almost similar submissions of Id CIT-DR in that case is recorded in para 17 to 20 in the decision of third Member. And after considering all such submission the Hon'ble third Member held that that price at which the assessee (industrial units) purchased power from the State Electricity Board can be applied as a valid CUP for determining the ALP of sale/supply of power by the CPP to its other unit.

11. Thus, on our independent appreciation of facts as discussed above, we do not find any merit in the various grounds of appeal raised by the revenue. In the result, all the grounds of appeal raised by revenue are rejected.
12. In the result, appeal of the revenue for the AY 2017-18 in ITA 138/Nag/2025 is dismissed.
13. Considering the fact that with similar set of fact we have dismissed the appeal of Revenue for AY 2017-18, thus, following the principle of consistency, the grounds of appeal raised by Revenue in remaining three assessment years are also dismissed with similar observation.

In the result, all four appeals of Revenue for AYs 2017-18, 2018-19, 2020-21, 2021-22 in ITA No.(s) 138 to 141/Nag/2025 are dismissed.

Order announced on 27/03/2026 as per Rule 34 of Income Tax (Appellate Tribunal) Rules-1963.

Sd/-
(KHETTRA MOHAN ROY)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai; dated : 27/03/2026
ZU- PS*

Copy to:
The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

By Order

Dy/Asstt. Registrar, ITAT, Nagpur