2025:CHC-OS:109-DB

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

ORIGINAL SIDE

RESERVED ON: 23.06.2025
DELIVERED ON:09.07.2025

CORAM:

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

ITAT/215/2024

(IA NO: GA/2/2024)

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL- 1, KOLKATA

VERSUS

RUNGTA MINES LIMITED

ITAT/216/2024

(IA NO: GA/2/2024)

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL- 1, KOLKATA

VERSUS

RUNGTA MINES LIMITED

ITAT/217/2024

(IA NO: GA/2/2024)

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL- 1, KOLKATA

2025:CHC-OS:109-DB

VERSUS

RUNGTA MINES LIMITED

Appearance:-
Mr. Prithu Dudhoria, Adv.

.....For the Appellant.

Mr. Subhas Agarwal, Adv.
Mr. Rajarshi Chatterjee, Adv.
Ms. S. Sahani, Adv.
Mr. Amit Shaw, Adv.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. These appeals have been filed by revenue under Section 260A of the Income Tax Act, 1961 (the Act) questioning the correctness of the order passed by the Income Tax Appellate Tribunal, "A" Bench Kolkata in ITA Nos. 801, 802, 286/Kol/2023 for the assessment years 2017-2018, 2018-2019, 2019-2020. The revenue has raised the following substantial questions of law for consideration:-

> *(a) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal was justified in law in relying on the decision of the Hon'ble Apex Court in case of Jindal Steel and Power Limited in Civil Appeal No. 13771 of 2015 in the present case whereas the facts and circumstances of both the cases are distinguishable?*
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> *(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 express "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 transaction referred to in section 92BA?

(d) Whether on the facts and in the circumstances of the case, the order of the Learned Income Tax Appellate Tribunal is perverse on the ground that the Transfer Pricing Officer has not applied external CUP method, which is one of the several methods for determining Arm's Length Price as laid down in the Act and the Hon'ble ITAT has not discussed in the body of the order as to why the same is not the most appropriate method?

(e) Whether in facts of the case and in law, the Hon'ble Income Tax Appellate Tribunal order is perverse in not appreciating:

(i) that the assessee's generating unit (the CPP) cannot as such claim any amount of benefit under Section 80-IA of the I.T. 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.

(ii) that when a captive power plant in an industry supplies electricity to its own manufacturing unit, there is no distribution costs involved and thus there is significant difference between distribution tariff and generation tariff and such cost differences are real and not imaginary.

(iii) that in applying the ratio of a decision which was based on laws and market conditions which have since been changed

and thereby ignoring the clear provisions of the Rule 10B(2)(d) of the Income Tax Rules, 1962 which consider the conditions prevailing in the market including law and government orders in force to be essential comparability factors.

(iv) that the landed rate at which non-eligible unit purchases power from SEB as comparable rate under arm's length standards without appreciating the fact that the said rate is regulated and therefore cannot be said to represent an uncontrolled transaction.

(v) that considering assessee's benchmarking taking external CUP as Most appropriate method when the internal CUP i.e. rate at which CPP sold surplus power to unrelated parties was available.

(f) Whether in facts of the case and in law, the Hon'ble ITAT was not justified in upholding the method adopted by the assesse to benchmark the transaction wherein average annual landed cost of electricity purchased by the consuming unit from SEB is taken as 'Market Value' whereas as per explanation to section 801A(8) of the Act, "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 is a specified domestic transaction referred to in section 92BA".

(g) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal was justified in law in no appreciating that a manufacturer cannot be compensated based on rates meant for distributors and thereby ignoring the clear provisions of Rule 10B(2)(b) of the Income Tax Rules, 1962 which

specify functions, assets and risks to be essential comparability factors for reference?

2. Since the issue which falls for consideration in all the appeals are identical and the substantial questions of law raised are also identical, they were heard together and are disposed of by this common judgement and order.

3. ITAT No. 215 of 2024 is taken as the lead case which relates to the assessment year 2017-2018. The respondent assessee is engaged in iron ore and manganese ore mining having mines in Orissa and Jharkhand and they also produce sponge iron, billets and power during the years under consideration.

4. For the assessment year 2017-2018, original return of income was filed showing total income of Rs. 934,43,95,510/- and subsequently revised on the identical sum and once again revised at total income of Rs. 934,43,99,430/-. The case was selected for scrutiny and notice under Section 143(2) was issued and subsequently notice under Section 142(1) along with questionnaire was served on the assessee. Thereafter another notice under Section 142(1) was issued giving opportunity of hearing to the assessee. It is not in dispute that the assessee responded to the notice and complied with the directions contained therein. The assessee participated in the hearing and was represented by their authorized representatives. The assessee was called upon to furnish various details and documents on various issues. However, in these appeals the issue which falls for consideration is the correctness of the addition on the Transfer Pricing Adjustment (TPA) made by the assessing officer. The assessment for the year

2017-2018 was completed under Section 143(3) of the Act by order dated 09.02.2021. Aggrieved by the same, the assessee preferred appeal before the Commissioner of Income Tax (Appeals), Kolkata [CIT(A)]. The assessee contested the addition of Transfer Pricing Adjustment (TPA) by contending that the assessing officer/TPO erred in rejecting the economic analysis document as part of the Transfer Pricing Study Report undertaken by the assessee to determine the Arm's Length Price (ALP) for sale of power by Captive Power Plant (CPP) to non-eligible units in accordance with the provision of the Act read with the Income Tax Rules.

5. It was contended that the cost of the power generated by CPP and transferred to non-eligible units should be based on average annual landed cost of electricity purchased by the assessee from the respective State Electricity Boards (SEBs). Further that the assessing officer/TPO erred in not appreciating the "comparability analysis" undertaken by the assessee between the transaction price for the purchase of power by non-eligible unit from CPP and the rate of power applied by the respective SEBs to its customers. Further the assessing officer/TPO erred in not appreciating the commercial and economic circumstances surrounding the transaction which justified the transaction price paid by the non-eligible units to CPP for supply of power. The assessing officer/TPO erred in considering the purchase price of power by the respective SEBs to be the market rate as per Section 80IA (8), whereas judicial precedences indicate that the market rate would be the selling price of the respective state SEBs. Further it was contended that the decision of this court in the case of ***Commissioner of***

Income Tax Versus ITC Limited 236 Taxman 612 (Kolkata) which related to a case arising for the assessment year 2002-2003 is not applicable as it was rendered prior to the coming into force of the Electricity Act, 2003 which liberalized the regulatory provision governing generation and distribution of power. In support of their contention, reliance was placed on the decision in ***CIT Versus Godavari Power and Ispat Limited [1]; CIT Versus Reliance Industries Limited [2], DCIT Versus M/s. Kesoram Industries Limited ITA No. 1722/Kol/2012***. Apart from the above decisions, several decisions of the Coordinate Bench of the tribunal were also relied on.

6. As could be seen from the assessment order dated 09.02.2021, the assessing officer confirmed the downward adjustment proposed by the TPO and made addition of Rs. 51,44,54, 814/-. The CIT(A) examined the facts and found that there is no dispute that both the CPPs qualified as eligible units under Section 80-IA of the Act. The CPPs transfer power to the manufacturing units and the transfer rate was ascertained by the assessee at the rate of Rs. 6.32 and Rs. 5.67 per units respectively. Since the transfer of power was between related entities the same qualified as specified domestic transaction under Section 92 BA read with Section 80IA (8) of the Act. The CIT(A) noted that the assessee conducted a Transfer Pricing Study for the same which revealed that after undertaking FAR analysis, it was concluded that the CPPs were electricity providers to the manufacturing units bearing normal risk associated with the said activity and that the

[1] (223 Taxman 234) (Chattisgarh HC)
[2] (421 ITR 686) (Bom HC)

manufacturing units besides obtaining power from CPPs also bought power from the State Electricity Boards (SEB) at tariff at which such power was available to industry in their states. The CIT(A) took note of the assertion of the assessee that the CPPs could be expected to charge the same rate for supply of power by them which the non-eligible /manufacturing units were paying to unrelated independent third parties. It was further noted that the per unit charge by SEB for supply of power for industrial usage which requires high voltage of power lines was compared with the rates at which the CPPs transfer power to the manufacturing units which was reported to Arm's Length Price (ALP) in the Transfer Pricing Study Report (TPSR). The assessee had contended that as the transfer rates charged by the CPPs were comparatively lower than the ALP, the Specified Domestic Transactions in question were to be considered to be at Arm's Length.

7. As mentioned above, the TPO rejected the Bench Marking Analysis done by the assessee as according to the TPO this was in contravention to the judgment of this court in the case of ***ITC Limited (236 Taxman 612)*** rendered for the assessment year 2002-2003. This led to issuance of show cause notice to the assessee observing that the transfer of power between eligible and non-eligible units cannot be made at the rate computed on the basis of landed cost of SEBs which were distribution entities and not power generating companies. According to the TPO, the functions performed by CPPs were those of the manufacturers of power and not those of a distributor. Therefore, the TPO was of the view that the appropriate Comparable Uncontrolled Price (CUP) for bench marking the said

transaction is the average rate at which the distribution companies in the state procured power from the generating companies. The TPO found that the bench marking exercise of the assessee unsuitable as in his view, a distribution company incurs several additional costs in terms of aggregate technical and commercial losses like theft, wheeling charges, cross subsidy charges, customer servicing charges etc. which are not incurred by power generators. The TPO also observed that there is a Tariff Regulatory Commission which arrives at separate power tariff for both power generators and power distributors while the former is generally fixed by Tariff Regulatory Commission by way of negotiation which is based on an in-built mechanism that ensures permissible profits to the power generator. Therefore, the TPO held that the benefit under Section 80IA of the Act can accordingly be claimed only on the basis of the rates charged for sale of power by the generating companies to the distribution companies. With certain other observations, the TPO substituted ALP determined by the assessee in the Transfer Pricing Study Report for the power transferred from the two eligible units with the ALP of Rs. 4.18 per unit instead of Rs. 6.32 per unit and Rs. 4.80 per unit instead Rs. 5.67 per unit respectively.

8. The appellant contested the finding recorded by the TPO by stating that the market conditions under which the power generating stations operate are significantly different from those of the Captive Power Units operated within the industries. The intent and purpose behind the setting up of CPPs by a manufacturing industry by explaining that the power tariff charged from the industrial customers by SEBs is different from that of the

domestic and agricultural consumers as the higher rate charged from the former subsidized the rate charged from the latter group of consumers. Therefore, power tariff in the case of manufacturing industry are very high. Further the Captive Power Plant (CPP) is set up with a dominant intent to save power costs, which the manufacturing unit is otherwise forced to incur and pay to SEBs and at the same time to ensure stable supply of uninterrupted power for smooth production of goods and resulted in cost savings to the company. Further it was contended that the assessee was also procuring power from SEBs beside getting from CPPs and they used landed rate at which the manufacturing units is procuring power from SEB as the comparable rate under the Arm's Length Standards. Further even the notified tariff orders which were referred to by the TPO are regulated and are ascertained by the State Electricity Commission after taking into account several socio-political considerations that have nothing to do with free market operation which fact is evident from the tariff order itself. Further the fact that the rates at which SEBs supplies power is regulated is of no consequences, as it is not the case of the TPO that this rate has been fixed by SEBs exclusively for the appellant as the SEB supplies power at the same tariff rate to all industrial consumers in the state which according to the assessee represents the prevailing market rate. The assessee also faulted the TPO for relying on the tariff order as it operated in all-together different market which is the business to business commonly known as (B2B) model. That the application of CUP as made by the TPO has to fail as the market condition of the comparable transaction cited by the TPO are not similar to that of the assessee. Therefore, they justified the CUP parameters adopted

by them. Further the assessee pointed out that the only purpose for which the manufacturing units is taken as the tested parties was to determine the market value at which the manufacturing units purchases power from unrelated third parties and therefore, they were right in taking the manufacturing units as tested party for the purpose of determination of Arm's Length Price (ALP) with most appropriate method (MAM) being the Comparable Uncontrolled Price (CUP).

9. The CIT(A) embarked upon an enquiry or in other words a fact finding exercise and called upon the assessee to explain why the CUP method should be considered to be the most appropriate method for the purpose of determining the sale price for the transfer of power from the assessee's eligible units namely the Captive Power Plant (CPPs) to the assessee's non eligible units namely the manufacturing units. The reply given by the assessee found acceptance by the CIT(A). The assessee submitted that the CUP method compares the price charged for property/services transfers/rendered in a controlled transaction with the price charged for similar property/services transfer/rendered in a comparable uncontrolled transaction under comparable circumstances. The assessee's contention was that a transaction is considered comparable only if, both, the property/services as well as the circumstances surrounding the controlled transaction are substantially the same as though that exists in uncontrolled transaction. The most important factor in determining the comparability under the CUP method is the existence of similarity between property/services in question. Further similarity of contractual terms and

economic conditions such as geographic markets and the level of market are also important, comparability factors to the open market under the CUP method. The assessee justified their bench marking analysis by contending that the same met the both the fair valuation standards as well as Transfer Pricing Guidelines.

10. The CIT(A) found that there was no dispute between the assessee and the TPO regarding the method to be used while bench marking the transfer of power and the controversy has arisen only on account of the difference in the manner of bench marking the transfer price of power under the CUP method. The CIT(A) noted Rule 10B of the Income Tax Rules and particularly Clause (a) of Sub Rule 1 of Rule 10B which explains Comparable Uncontrolled Price (CUP) method. In terms of the said rule, the application of CUP method requires strict product comparability which has been transacted under similar conditions. This method can be applied where associated enterprises buy or sell similar goods or services in comparable transactions with unrelated enterprise or when unrelated enterprise buy or sell similar goods or services under similar conditions as is being done between the associated enterprises. The two broad classifications of the CUP method was noted namely Internal CUP method and External CUP method. Under the Internal CUP method, the controlled transaction between associated enterprises involving buying or selling of goods is compared with the transactions conducted by any of the associated enterprises with unrelated parties for the same goods under similar circumstances. By referring to the various judgments, it was pointed out that if reliable data is

available then Internal CUP is most appropriate method. However, where such reliable internal data is not available, resort has to be made to External CUP method which involves comparison of prices paid / charged for the same goods between two unrelated third parties, with the comparable transaction conducted between the associated entities.

11. The CIT(A) agreed with the contention raised by the assessee after noting that both non eligible units had also purchased power from the respective State Electricity Boards apart from procuring power from their Captive Power Plants and therefore accepted the applicability of Internal CUP method as adopted by the assessee. The CIT(A) appears to have called for various documents and took note of the sample copies of the bills showing purchase of power by non-eligible units. Further the CIT(A) noted that the availability of reliable data has not been disputed by the TPO. Reference was made to the decision of the learned tribunal in the case of M/s. ***Star Paper Mills Limited Versus DCIT in ITA No. 127/Kol/2021 dated 26.10.2021*** and the decision in the case of ***Reliance Industries Limited*** (supra). With regard to the product comparability and the choice of the tested parties, the following findings was rendered by the CIT(A):-

> *Therefore, 'product comparability' is undoubtedly of paramount importance and therefore the choice of 'tested party' follows. In the present case, it is noted that the product in question is 'power'. The manufacturing unit procures power from the eligible CPPs as well as the Grid and the said product viz., 'power' purchased from both these parties is strictly comparable. Unlike other products where there may be difference in quality, size etc., there is*

> *no such distinguishing qualitative feature of 'power' or 'electricity'. Hence, once the 'product' comparability' is established, then when the choice of 'tested party' is available internally, then it assumes significance over an external 'tested party'.*
>
> *Like in the present case, the manufacturing unit is procuring the same product from the CPP and the Grid and therefore the requirement of both 'product comparability' and availability of 'tested party' stands met. Accordingly, the Ld. TPO's contention that choice of 'tested party' is irrelevant and thereby justifying his action of considering the external power generating stations as the 'tested party' instead of the appellant's manufacturing units is not correct and cannot be accepted.*
>
> *For the aforestated reasons, therefore, the Ld. TPO's interpretation of the term 'arm's length price' vis-à-vis 'open market value' and the CUP comparison undertaken under different market conditions is, in my view, defective and cannot be accepted. Instead, I find merit in the benchmarking analysis of the appellant in which the market conditions were similar in as much as the markets to which the SEB and CPP catered, that is, the end-consumers was the same.*

12. The CIT(A) also considered the correctness of the order passed by the TPO placing heavy reliance on the decision of this court in ITC Limited (supra) and while doing so held that the said decision is distinguishable on facts as it was rendered in the context of era preceding the enactment of the Electricity Act, 2003 and to support such finding several decisions of the tribunal were relied upon. Reference was made to the decision of the High Court of Gujarat in ***Principal Commission of Income Tax Versus Gujarat***

Alkalis and Chemicals Limited [3] and the decision of the High Court of Bombay in ***CIT-LTU Versus Reliance Industries Limited*** [4] wherein the decision in the case of ***ITC Limited*** and ***Gujarat Alkalis and Chemicals Limited*** were considered and the appeal filed by the revenue was dismissed.

13. With the above discussion, the CIT(A) held that the methodology followed and bench marking performed by the assessee was legally justified and that the intent and purpose of setting up of the Captive Power Plant (CPP) is markedly different from that of the power generation units as well as the State Electricity Board to which units supplied electricity and undisputedly the CUP method was of the most appropriate method in the assessee's case to determine ALP and it was correct and more appropriate to use the Internal CUP method rather than External CUP for the reason that former was more robust and reliable method for determining the Arm's Length Price (ALP) as well as for the fact that reliable internal data was readily available in the assessee case. Further it was appropriate to take the tested party to be manufacturing units (non-eligible units of the assessee), since it was procuring power both from CPP as well as from SEBs and thereafter to determine ALP with respect to the transaction. The decision of this court in ***ITC Limited*** held to be not applicable and distinguishable as the said judgment was pronounced in the pre-de-regulation era that is before 2003 and accordingly the assessee's appeal was allowed. The revenue challenged the order passed by the CIT(A) before the tribunal which re-examined the factual position and affirmed the order passed by the CIT(A)

[3] 88 taxmann.com 772 (Guj)
[4] [(2019) 102 taxmann.com 371 (Bom)]

by dismissing the revenue's appeal. The correctness of the order passed by the tribunal is being challenged before this court.

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

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*

[5] (2022) 134 taxmann.com 177 (Kolkata-TRIB)

> *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 Court in ***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

[6] (2024) 460 ITR 162 (SC)

that the market 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 of this 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.

22. In the result, these appeals are dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, CJ.)

I Agree.

[CHAITALI CHATTERJEE (DAS), J.]

(P.A.- SACHIN)