Hindustan Zinc Limited,Udaipur vs Acit/Dcit C-2, Udaipur on 3 June, 2026

IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR
BEFORE DR. MITHA LAL MEENA, HON'BLE ACCOUNTANT MEMBER
AND SHRI SUDHIR PAREEK, HON'BLE JUDICIAL MEMBER

IT(TP)A 1/JODH/2025
(Assessment Year - 2022-23)

Hindustan Zinc Limited Yashad Bhawan, Swaroop Sagar Road, Udaipur - 313004 PAN No. AAACH 7354 K	DCIT Circle-2/ National Faceless Appeal Centre Udaipur - 313001
Assessee by	Shri Ajay Vohra, Sr. Advocate (Virtual)
Revenue by	Shri Lovish Kumar - CIT-DR (Virtual)
Date of Hearing	25 / 03 / 2026.
Date of Pronouncement	03 / 06 / 2026.

ORDER

PER DR. MITHA LAL MEENA, A.M.:

This appeal is filed by the assessee against order of Assessing Officer (hereinafter referred to as "the AO") dated 12.11.2025 for the Assessment Year (In short "AY") 2022-23 passed u/s 143(3) r.w.s. 144C(13) read with section 144B of the Income-tax Act, 1961 (in short, the Act).

2. The appellant assessee has raised the following grounds of appeal:-

> "1. That the Assessing Officer (AO') / National Faceless Assessment Centre (NFAC) erred on facts and in law in completing assessment vide Final Assessment Order dt. 12.11.2025 u/s 143(3) r.w.s. 144C(13)/ 144B read with order u/s 154 r.w.s. section 143(3) of the Income-tax Act ("the Act") dt. 27.11.2025 at an income of Rs.1,22,46,66,77,92/- as against the returned income of Rs. 11870,13,11,947/-.
>
> 2. That on the facts and circumstances of the case and in law the order dated 12.11.2025 passed by the AO / NFAC under section 143(3) read with section 144B /144C(13) of the Act, having been passed beyond limitation provided in terms of Section 144C(13) read with section 153(3) of the Act, is illegal being barred by limitation, void ab initio and is liable to be IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 quashed.
>
> 3. That the DRP/AO/ NFAC/TPO erred on facts and in law in disallowing deduction claimed by the appellant under section 80-IA of the Act in respect of Captive Power Plant (CPP) amounting to Rs. 566,98,50,458/- in the final assessment Order dt. 12.11.2025 under section 143(3) r.w.s. 144C(13)/144B read with order u/s 154 r.w.s. section 143(3) of the Act dt. 27.11.2025 in respect of the eligible undertakings,

allegedly on the basis of the order passed under section 92CA(3) of the Act dt. 28.01.2025 read with Order under section 154 dt 21.06.2025 by the Transfer Pricing Officer (TPO').

3.1 That the DRP/NFAC/AO/TPO erred on facts and in law in reducing the claim under section 80-IA in respect of CPP units by considering the transfer pricing of the power supplied by CPP to other manufacturing units of the Appellant at an average price of Rs. 4.07/- per unit as against an average price of Rs. 8.38/- per unit considered by the Appellant being the rates at which electricity is purchased from SEBs. 3.2 That the DRP/NFAC/AO/TPO erred on facts and in law in not appreciating that the specified domestic transaction of transfer of power by the Captive Power Plants ('CPP') of the Appellant was appropriately benchmarked by applying the 'Other method' on the basis of rates at which the power is supplied by the State Electricity Boards ('SEBs') to third party consumers.

3.3 That DRP/NFAC/AO/TPO erred on facts and in law in considering the rate at which power is supplied by the power generation companies to the State Electricity Boards ('SEBs') as an appropriate benchmark for 'the market price' of the Specified Domestic Transaction of supply of power undertaken by the Appellant. 3.4 That the DRP/NFAC/AO/TPO erred on facts and in law in arbitrarily relying upon the tariff order issued by the SEBs for the purpose of undertaking benchmarking analysis without appreciating that the said rates are for supply for power by power-generation companies to SEBs and not for further sale of power to the ultimate consumers and this was not the reflection of the 'market price'. 3.5 That the DRP/NFAC/AO/TPO erred on facts and in law in not appreciating that the CPP supplies continuous uninterrupted power which is critical for the operations of the appellant and therefore, deserves premium pricing in comparison to rates charged by SEBs for supply of power.

3.6 That the NFAC/AO erred on facts and in law in disallowing deductions under section 80-IA of the Act in respect of eligible units for transfer of power to the extent of Rs. 326,38,15,397/-, allegedly on the basis of the order passed under section 92CA(3) of the Act dt. 28.01.2025 read with Order under section 154 dt 21.06.2025 by the TPO. 3.7 That the DRP/AO/NFAC/TPO erred on facts and in law in disregarding the favourable judicial pronouncements while making the TP adjustment, including the ruling passed by the Hon'ble ITAT in Appellant 's own case for the AY 2020-21 (ITA No. 623/Jodh/2024), AY 2018-19 & AY 2017-18 (ITA Nos. 128 & 127/Jodh/2022 respectively), AY 2012-13 (ITA No 404 & 412/Jodh/2017) and AY 2011-12 (ITA Nos. 262 & 246/Jodh/2017).

4. That the DRP/NFAC/AO/TPO erred on facts and in law in holding that the Appellant was not entitled to deduction u/s 80-IA of the Act amounting to Rs. 10,56,99,413/- for generation and transfer of steam which is included in the profit computed for Dariba CPP of IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 160MW and LCV Boiler CPP, thus reducing the claim of the Appellant u/s 80-IA by the corresponding amount in the Final Assessment Order dt. 12.11.2025 under section 143(3) r.w.s. 144C(13)/144B read with order u/s 154 r.w.s. section 143(3) of the Act dt. 27.11.2025, allegedly on the basis of the order passed under section 92CA(3) of the Act by the Transfer Pricing Officer (TPO').

4.1 That the DRP/NFAC/AO/TPO erred on facts and in law in rejecting the aggregate benchmarking analysis of transfer of steam along with transfer of power. 4.2 That the DRP/NFAC/AO/TPO erred on facts and in law in arbitrarily considering cost of steam at NIL allegedly by applying other method, when the powers of TPO are limited to determining the Arm's Length Price.

4.3 That the NFAC/AO erred on facts and in law in disallowing deductions under section 80-IA of the Act in respect of eligible units for transfer of power to the extent of Rs. 8,11,90,985/- allegedly on the basis of the order passed under section 92CA(3) of the Act dt. 28.01.2025 read with Order under section 154 dt 21.06.2025 by the TPO. 4.4 That the DRP/AO/NFAC/TPO erred on facts and in law in disregarding the favourable judicial pronouncements while making the TP adjustment, including the ruling passed by the Hon'ble ITAT in Appellant's own case for the AY 2020-21 (ITA No. 623/Jodh/2024), AY 2018-19 & AY 2017-18 (ITA Nos. 128 & 127/Jodh/2022 respectively); AY 2012-13 (ITA No 404 & 412/Jodh/2017) and AY 2011-12 (ITA Nos. 262 & 246/Jodh/2017).

5. That the AO/NFAC/TPO/DRP erred on facts and in law in arbitrarily enhancing the income of the Appellant in the order passed under section 143(3) read with section 144B /144C(13) r.w.s. 92CA(3) by making addition of Rs. 17.82 crores allegedly on account of allocaton of common/HO expenses, in respect of the units eligible for deduction under section 80-IA of the Act.

5.1 The DRP/NFAC/AO/TPO erred in facts and in law in holding that the deduction under section 80-IA was available only after apportioning HO expenses and depreciation on common assets on turnover basis while computing profits relatable to the eligible units, and thus reducing the deduction claimed by a sum of Rs. 17.82 crores.

5.2 That the DRP/AO/NFAC/TPO erred on facts and in law in disregarding the favourable judicial pronouncements while making the TP adjustment, including the ruling passed by the Hon'ble ITAT in Appellant's own case for the AY 2020-21 (ITA No. 623/Jodh/2024),AY 2018-19 & AY 2017-18 (ITA Nos.128 & 127/Jodh/2022 respectively), AY 2012-13 (ITA No 404 & 412/Jodh/2017) and AY 2011-12 (ITA Nos. 262 & 246/Jodh/2017).

6. That the DRP/AO/ NFAC/TPO erred on facts and in law in disallowing deduction claimed by the appellant under section 80-IA of the Act on Effluent Treatment Plants ("ETP") to the tune of Rs. 24,21,59,598/- for ETP Chanderia and ETP Debari in the Final Assessment Order dt. 12.11.2025 under section 143(3) r.w.s. 144C(13)/144B read with order u/s 154 r.w.s. section 143(3) of the Act dt. 27.11.2025 allegedly on the basis of the order passed under section 92CA(3) of the Act dt. 28.01.2025 read with Order under section 154 dt IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 21.06.2025 by the Transfer Pricing Officer (TPO').

6.1 That the DRP/AO/NFAC/TPO have erred in both facts and law by rejecting the 'Other Method' applied by the appellant as the most appropriate method for benchmarking (based on quotation provided by an independent vendor for operations and maintenance of ETP units), and instead incorrectly applying the Comparable Uncontrolled Price ("CUP") method, without there being any comparable uncontrolled transaction.

6.2 Without prejudice, the DRP/AO/NFAC/TPO erred on facts and in law, while making adjustment towards transfer of treated water by ETP units, by not allowing a set off in respect of the lower margin of Dariba ETP unit which has earned the gross profit of 80% vis-à-vis the gross profit of 127.375% of the comparable companies determined by the TPO himself and as such the Appellant should have been provided the benefit of set off of such lower margin, which would lead to Nil adjustment on net basis for transfer of treated water by ETP units.

7. Without prejudice, the AO/ NFAC erred in facts and in law in not allowing additional MAT Credit of Rs. 131,57,69,489/-, while computing tax liability as sufficient unutilized MAT credit balance is available as per the return of income for the AY 2022-23.

7.1 That the AO/NFAC erred in facts and in law in disregarding the favourable judicial pronouncement to adjust the available MAT credit against the outstanding tax and interest demand, passed by the Hon'ble ITAT, Jodhpur in Appellant 's own case for the AY 2020-21 (Stay application No. 07/Jodh/2024).

8. That the AO/NFAC erred in facts and in law in incorrectly levying interest under section 234B of the Act.

9. That the AO erred on facts and in law in initiating penalty proceedings under section 270A read with section 274 of the Act for the alleged under-reporting of income.

The Appellant craves leave to add, amend, alter or vary, any of the aforesaid grounds of appeal before or at the time of hearing of the appeal and consider each of the grounds as without prejudice to the other grounds of appeal."

3. Briefly the facts of the case as per record are that the appellant company is engaged in the business of mining of ore and manufacturing of Zinc and lead. In the process, it generates several byproducts like silver, sulphuric acid and allied products.

It had also set up power plants for captive consumption. The power generated from such Captive Power Plants has been transferred to other manufacturing units of the IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 appellant. The Appellant has filed return of income declaring income of Rs.

1,18,70,13,11,947/- for the impugned Assessment Year 2022-23. That the Scrutiny assessment proceedings were initiated vide a notice issued under section 143(2) of the Act and Draft Assessment Order was passed on 11.03.2025 under section 144C(1) r.w.s. 143(3) r.w.s. 144B of the Act with an addition of Rs. 709,74,56,659/-. Pursuant to the Draft Assessment Order, objections were filed by the appellant before the Dispute Resolution Panel (DRP) which were disposed of vide directions issued under section 144C(5) of the Act on 06.11.2025. While giving effect to the DRP directions, the assessment order under section 143(3) read with section 144C(13)/144B and order under section 154 read with section 143(3) of the Act were passed determining the assessed income of Rs. 1,22,46,66,77,927/- as against the returned income of Rs.

1,18,70,13,11,947/- after making the various additions/disallowances.

4. Being aggrieved with the order passed by the AO, the assessee has filed this appeal before us.

5. Ground No. 1, being a General Ground, does not need any specific adjudication.

6. Ground No. 2 is pertains to the contention of the appellant that the assessment order is barred by limitation provided in terms of Section 144C(13) read with Section IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 153(3) of the Act. However, the Ld. counsel for the assessee did not press this ground and therefore, the same is dismissed, as not pressed.

7. Ground Nos. 3-3.7 are interlinked and related to disallowance of deduction claimed under section 80IA of the Act in respect of Captive Power Plants (CPPs) amounting to Rs. 5,66,98,50,458/- (in aggregate) in respect of the eligible undertakings, based on the order passed under section 92CA(3) of the Act by the Transfer Pricing Officer (In short 'TPO').

7.1 The Ld. Counsel for the assessee narrated the facts that the Appellant has eligible Thermal Captive Power Plant located at Dariba (capacity 160MW), Solar Captive Power Plant at Debari and Dariba (capacity 12MW and 4 MW respectively), engaged in generation of electricity. During the Assessment Year 2022-23, the CPPs and the solar power plants were engaged in generation of electricity to be utilized for in-house consumption and these CPPs provide uninterrupted power supply to taxable units of HZL. The appellant benchmarked the transaction using other method based on rates at which the power is supplied by the State Electricity Board (SEBs) to third party customers.

7.2 The TPO rejected the contentions of the applicant and held that it was not the price at which the appellant had purchased the electricity from the State Electricity IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 Board (SEB) which could be used for CUP, but it was the price at which the power generation companies like RVUN, Adani Power Ltd. etc. had sold the electricity to the state grid or third parties which was to be used for benchmarking the transaction. The TPO arrived at an average rate of Rs. 4.07/- per unit for sale of electricity by power generation companies to State Grid/Third parties and held the same as external CUP.

The TPO held that assessee had applied wrong CUP by taking purchase rate of end consumer i.e. sale rate of SEBs as sale rate for CPPs. The TPO concluded that since external CUP is available, rate of Rs. 4.07/- per unit is considered for benchmarking the transaction of sale of power by the eligible unit to non-eligible unit and made adjustment of Rs. 566,98,50,458/-.

7.3 At the time of hearing, the Ld. counsel of assessee reiterated that the issue is already decided by the Hon'ble Tribunal in favour of appellant for Assessment Years -

2008-09 to 2011-12, 2012-13, 2017-18, 2018-19 and 2020-21.

7.4 Per contra, the ld. DR contended that the past orders of the Hon'ble Courts and Hon'ble ITAT including the decision of Hon'ble Supreme Court in case of CIT v. Jindal Steel & Power Ltd. [2023] 157 taxmann.com 207 (SC) / [2024] 297 Taxman 253 (SC) / [2024] 460 ITR 162 (SC) [06-12-2023] were rendered in context of pre-amended provisions and are not binding precedent for AY 2013-14 onwards in view of IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 amendments in section 80A(6) & 80IA(8). The Ld. DR relied on the judgement of Hon'ble ITAT, Jaipur Bench in ITA No. 162, 178, 181, 182 / JP / 2016 in order dated 28/12/2017 in the case of Shree Cement Limited which in turn relied on the case of M/s Chambal Fertilizers & Chemicals Limited vs CIT (ITA No. 459/JP/12 & others dated 28.10.2016). The DR further contended that in the case of the appellant, 'Market price' of the electricity units as per standards rates of DISCOMs cannot be the "Arms' Length Price" in the facts and circumstances of comparative Functions, Assets and Risks distribution between the Taxable units and CPP eligible units and also questioned applicability of other method.

7.5 The Ld. Counsel of the Assessee, inter alia, further submitted as below:

> "In this regard, it is also submitted that Other Method as per Rule 10AB can be applied in case of the appellant. The Hon'ble Delhi High Court in the case of Sabic India Private Limited (ITA 514/2024) undertook a detailed analysis of the provisions of Rule 10AB and held that Rule 10AB of the Rules expressly contemplates adoption of a method which takes into account price that has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, under similar circumstances. The relevant portion of the said judgment reads as below:
>
> "36. Rule 10AB of the Rules expressly contemplates adoption of a method which takes into account price that has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, under similar circumstances. It is, thus, essential that the transactions which are benchmarked by using the method under Rule 10AB of the Rules are the same or similar transactions."

For applying 'other method' Rule 10AB of the Rules expressly contemplates adoption of a method which takes into account price that has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, under similar circumstances.

To sum it up, the method as applied by the appellant by comparing the price in unrelated party transaction, as opposed to a profit-based method comparison does not require taking IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 into consideration the cost incurred for operating the CPP. Referring to Rule 10AB and Rule 10B of the Income Tax Rules, 1962 ("the Rules") the Ld. DR has also alleged that comparability of controlled transaction with the uncontrolled transaction needs to be judged. It is submitted that Rule 10B of the Rules including Clause (a) of Sub Rule 1 explains Comparable Uncontrolled Price (CUP) method. In terms of the said rule, the application of CUP method requires product comparability in transactions under similar conditions and 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. 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. Further, when reliable data is available, then Internal CUP is the most appropriate method and in case of non-availability of such reliable data, one can apply the 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 related parties.

In the case of Principal Commissioner of Income-tax Central- 1 v. Rungta Mines Ltd. - [2025] 176 taxmann.com 410 (Calcutta), the Hon'ble Calcutta High Court has dealt with the issues of applicability of internal CUP, choice of tested party and dismissed the grounds of the revenue while confirming assessee's position of benchmarking power rates of CPPs to assessee's own taxable units. The relevant portion of the judgment is reproduced below:

> "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 IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 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.

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 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.

.....

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.

....

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."

The Ld. DR in his submission, has also alleged that rate of power supplied by power generating companies to State Discoms should be compared and not the price charged by State Discoms to ultimate industrial consumers. In this regard, it is submitted that the rates at which power is purchased by distribution companies from generation companies are the rates charged by

generation companies to middlemen like distribution companies/ transmission companies (i.e. B2B business models) which are governed by altogether different level of market and are therefore not comparable to the rates which are charged to ultimate consumer (manufacturing unit in the instant case) (B2C Business Models).

The Hon'ble ITAT, Jaipur in DCIT v/s Shree Cement Ltd. (ITA 152 & 142/JP/2023) has dealt with these issues and dismissed the ground of Revenue. Relevant portion of the said IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 judgment reads as follows:

> "30.12. The ld. A/R of the assessee also submitted that the rates at which power is purchased by distribution companies from generation companies are the rates charged by generation companies to middlemen (i.e. B2B business models) which are governed by altogether different level of market and are therefore not comparable to the rates which are charged to ultimate consumer (B2C Business Models), Further, each of the entities involved in the power market (engaged in generation of power, transmission, distribution as well as trading of power) are regulated by separate regulatory provisions thus it is not appropriate to compare the rates at which the generating companies sell power to other licensees as these licensees are not the ultimate consumers as in the case of assessee where the CPPs transfer power directly to the ultimate industrial consumer i.e. the manufacturing units of assessee.

.....

30.14. In light of above discussion we are of the view that the ld. CIT(A) has rightly held that sale rate of Generating Companies does not represent actual market value. 30.15. We, thus, respectfully, following the orders of the Hon'ble Jurisdictional Rajasthan High Court and the consistent view taken by the Coordinate Bench of the Tribunal, Jaipur, and the discussions made herein above, we find no infirmity in the order of the ld. CIT (A), accordingly the order of the ld. CIT (A) is upheld. The ground of the Revenue is dismissed."

(Emphasis supplied) In view of the above, it is submitted that the contentions made by the Ld. DR on account of 'market price', 'comparative FAR analysis of controlled and uncontrolled transactions are devoid of merit and deserve to be rejected.

It is submitted that in the case of CIT v. GlaxoSmithKline Asia (P.) Ltd.; 236 CTR 113 (SC), relied upon by the Ld. DR, the Hon'ble Apex Court merely suggested, for the purpose consideration by the CBDT, that transactions mentioned under section 80-IA of the Act may be brought within the ambit of transfer pricing provisions without laying down any directives or principles for determination of arm's length price. The relevant extract of the decision of the Hon'ble Apex Court is as follows:

> "6. The suggestions which need consideration are whether the law should be amended to make it compulsory for the taxpayer to maintain books of account and other documents on the lines prescribed under rule 10D of the Income-tax Rules in respect of such domestic transactions and whether the taxpayer should obtain an

> audit report from his Chartered Accountant so that the taxpayer maintains proper documents and requisite books of account reflecting the transactions between related entities as at arm's length price based on generally accepted methods specified under the Transfer Pricing Regulations. Normally, this Court does not make recommendations or suggestions. However, as stated above, in order to reduce litigation occurring in complicated matters, we are of the view that the question of amendment, as indicated above, may require consideration expeditiously by the Ministry of Finance. In the meantime, CBDT may also consider issuing appropriate instructions in that regard.
>
> 7. Accordingly, we direct the Registry to forward copies of this Order both to the Ministry of Finance and CBDT for consideration."

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 (Emphasis supplied) It is submitted that the transaction of transfer of power by the eligible undertaking to the manufacturing units of the appellant undisputedly falls within the ambit of Transfer Pricing provisions as contained in Chapter X of the Act. Therefore, there is no quarrel with the directive of the Hon'ble Apex Court in the case of Glaxo Smithkline (supra). It is submitted that, the amendment brought in the Explanation to Section 80-IA(8) provided that "Market Value" in relation to any goods or services can be calculated in two ways or can be calculated by adopting two mechanisms: (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 section 92BA.

From the above it is noted that, "or", is dividing the two clauses under Explanation to Section 80IA and hence, it clearly indicates the intention of the legislature to give an option to the assessee entitled to claim deduction u/s 80IA(8) to choose either of the two mechanisms. If in a scenario, the availability of the market value that one would ordinarily fetch in the open market is not possible to be determined then, the second option is always available with the assessee. For instance, if there are certain unique services which have been transferred or any unique goods or goods produced with patented IPR or intangibles where the market rate which can ordinarily fetch in the open market is not available, or where market value is not available in the open market, then market value has to be determined in terms of Sub-Clause

(ii). If such option is not available, then the AO cannot ascertain the market value of goods and services. However, if market value is available on such goods and services which are available in the open market, then same can be adopted for the purpose of Section 80IA(8). The word "or" appearing between two sub-clauses in Explanation to Section 80IA (8) cannot be inferred that after the introduction of SDT from A.Y.2013-14 only sub-clause (ii) alone can be applied. The use of the word "or" be interpreted as below:

> (a) both manner are available with the assessee to demonstrate that market value of the goods and services has to be either by showing that the price of such goods and services is in consonance with the price available in the open market; or

> (b) if assessee is not able to establish the price available in the open market, then the price of goods and services has to be established through arm's length principle u/s 92CA/92F. It also means that, if the price of the transfer of goods and services is in consonance with the price available in the open market then the profits of the eligible business shown as per this price is eligible for deduction and in that case the second option may not be necessary.

The Hon'ble Supreme Court in case of Jindal Steel & Power Limited [2024] 460 ITR 162 categorically held that power supplied by the SEBs to the industrial consumers should be construed to be the market value of electricity. The Hon'ble Supreme Court held that it should not be compared with the rate of power sold to or supplied to the SEBs since the rate of power to a supplier cannot be the market rate of power sold to a consumer in the open market. The relevant portion of the said decision of the reads as below:

> "22. Reverting back to sub-section (8) of Section 80-IA, it is seen that if the assessing officer disputes the consideration for supply of any goods by the assessee as recorded IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 in the accounts of the eligible business on the ground that it does not correspond to the market value of such goods as on the date of the transfer, then for the purpose of deduction under section 80-IA, the profits and gains of such eligible business shall be computed by adopting arm's length pricing. In other words, if the assessing officer rejects the price as not corresponding to the market value of such good, then he has to compute the sale price of the good at the market value as per his determination. The explanation below the proviso defines market value in relation to any goods to mean the price that such goods would ordinarily fetch on sale in the open market. Thus, as per this definition, the market value of any goods would mean the price that such goods would ordinarily fetch on sale in the open market.
>
> 23. This brings to the fore as to what do we mean by the expression "open market"

which is not a defined expression.

24. Black's Law Dictionary, 10th Edition, defines the expression "open market" to mean a market in which any buyer or seller may trade and in which prices and product availability are determined by free competition. P. Ramanatha Aiyer's Advanced Law Lexicon has also defined the expression "open market" to mean a market in which goods are available to be bought and sold by anyone who cares to. Prices in an open market are determined by the laws of supply and demand.

25. Therefore, the expression "market value" in relation to any goods as defined by the explanation below the proviso to sub-section (8) of Section 80-IA would mean the price of such goods determined in an environment of free trade or competition.

> "Market value" is an expression which denotes the price of a good arrived at between a buyer and a seller in the open market i.e., where the transaction takes place in the

normal course of trading. Such pricing is unfettered by any control or regulation; rather, it is determined by the economics of demand and supply. .....

27. Another way of looking at the issue is, if the industrial units of the assessee did not have the option of obtaining power from the captive power plants of the assessee, then in that case it would have had to purchase electricity from the State Electricity Board. In such a scenario, the industrial units of the assessee would have had to purchase power from the State Electricity Board at the same rate at which the State Electricity Board supplied to the industrial consumers i.e., Rs. 3.72/- per unit.

28. Thus, market value of the power supplied by the assessee to its industrial units should be computed by considering the rate at which the State Electricity Board supplied power to the consumers in the open market and not comparing it with the rate of power when sold to a supplier i.e., sold by the assessee to the State Electricity Board as this was not the rate at which an industrial consumer could have purchased power in the open market. It is clear that the rate at which power was supplied to a supplier could not be the market rate of electricity purchased by a consumer in the open market. On the contrary, the rate at which the State Electricity Board supplied power to the industrial consumers has to be taken as the market value for computing deduction under section 80-IA of the Act.

29..... On the contrary, the rate at which State Electricity Board supplied electricity to the industrial consumers would have to be taken as the market value for computing IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 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.

.....

34. That being the position, we have no hesitation in answering this issue in favour of the assessee and against the revenue."

It is submitted that the specified domestic transaction of transfer of power has rightly been benchmarked by the appellant on the basis of rates at which the power is supplied by the State Electricity Board (SEBs), has also been affirmed by the Hon'ble Apex Court in the case of CIT v. Jindal Steel & Power Ltd (supra).

The contention of the Ld. DR that the aforesaid decision in the case of Jindal Steel & Power Ltd. (supra) was not rendered in the context of amended transfer pricing provisions and cannot be relied upon, is not tenable for the reasons submitted as under:

It is submitted that sub-section (8) of section 80 IA of the Act clearly mandates that the price at which goods are to be transferred from one business of the assessee to another business should correspond to the market value of such goods for computing the profits of the eligible business. The expression 'market value' has been defined in Explanation to sub-section (8) to section 80-IA of the Act, as the price which such goods would ordinarily fetch when sold in the open market. From the aforesaid, it can be deciphered that sub-section (8) of section 80-IA of the Act seeks to provide that the profits of the eligible business should be computed by recording inter unit transfer of goods and services at the price such goods would ordinarily fetch on sale in the open market. Section 92F of the Act defines the term arm's length price to mean a price which is applied or proposed to be applied in a transaction between unrelated enterprises under uncontrolled circumstances.

Vide the amendment brought in vide Finance Act, 2012 in Section 80-IA(8) w.e.f. AY 2013-14 transfer pricing regulations were made applicable to certain domestic transactions. The amended provisions, in effect, only introduced methods for determination of market value and has no quarrel with the amendment in Section 80-IA or 80A. The definition of market value was also there in the unamended provisions, and it was not changed in the amended provisions.

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 Accordingly, the submission of the Ld. DR that the decision of the Hon'ble Apex Court in the case of Jindal Steel & Power Ltd. (supra) is not applicable to the facts of the case of the appellant for the reason that it was rendered in the context of pre-amended section 80 IA of the Act, is not in accordance with the scheme of the Act and is bound to be rejected. In this regard, reliance is also placed on the decision of the Hon'ble Delhi High Court in the case of Pr. CIT vs DCM Shri Ram Ltd. (ITA 566/2023) which relates to AY 2014-15 (i.e. post amendment w.e.f. AY 2013-14). In this case, the Hon'ble Delhi High Court, relying upon the decision of the Hon'ble Supreme Court in the case of Jindal Steel & Power Ltd (supra), for the purpose of determination of arm's length price of specified domestic transaction of transfer of power by eligible undertaking to manufacturing undertaking of the assessee therein, held that the said transaction was appropriately

benchmarked by the assessee by relying upon the price charged by the State Electricity Board ('SEB').

In fact, similar issues, as raised by the Ld. DR in appellant's case, were raised by the Dept. in the case of Rungta Mines (supra), where the Hon'ble Calcutta High Court dismissed the Revenue's appeals. In that case the Dept. 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?

(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.

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23

(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.

.....

(f) Whether in facts of the case and in law, the Hon'ble ITAT was not justified in upholding the method adopted by the assessee 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 80IA(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?"

> (Emphasis supplied) Similarly, in the case of Star Paper Mills Ltd. [2025] 172 taxmann.com 391, where similar issues were raised by the dept. w.r.t. Arm's length price of power in view of the amended provisions introduced by Finance Act 2012, the Hon'ble Calcutta High Court analyzed the issues and relying upon the decision of the Hon'ble Supreme Court in the case of CIT v. Jindal Steel & Power Ltd (supra), dismissed the appeal of the revenue.

All these issues w.r.t. the applicability of Hon'ble Supreme Court decision in Jindal Steel & Power Ltd (supra) vis-à-vis the amended provisions are also clearly explained by Hon'ble Mumbai tribunal in DCIT v/s JSW Energy Ltd. [2026] 182 taxmann.com 201 while dismissing the grounds of revenue.

It is also submitted that Hon'ble Supreme Court in para 32 (this para has been quoted by the Ld. DR also) of its judgment in case of Jindal Steel and Power Ltd (supra) has categorically held that the decision of Calcutta High Court in the case of Commissioner of Income-tax, Kolkata - III v. ITC Ltd. (236 Taxman 612 (Calcutta)/2016) will be of "no assistance to the revenue". Hence, the contention of the Ld. DR, that the decision in ITC Ltd (supra) has received any indirect observational approval from the Apex Court, is factually incorrect. It is imperative that the said decision cannot be relied on by the Ld. DR. Hence, the contention of the Ld. DR is devoid of any merit and is liable to be rejected.

Further, the Hon'ble Calcutta High Court in the case of PCIT vs. Rungta Mines Ltd. (supra) has also distinguished the ITC Ltd. case (supra) and in fact relied on the Supreme court judgment in Jindal IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 Steel & Power Ltd. (supra) while dismissing appeal of the revenue in this regard. The relevant portion of the said judgment reads as below:

> "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."

(Emphasis Supplied) The appellant, hereinabove, has already referred to multiple High Court and Tribunal judgments where applicability of the decisions rendered prior to the amendment in Section 80A(6) was held in assessee's favour.

The ld. DR also relied on the judgement of Hon'ble ITAT, Jaipur Bench in ITA No. 162, 178, 181, 182 / JP / 2016 in order dated 28/12/2017 in the case of Shree Cement Limited which in turn relied on the case of M/s Chambal Fertilizers & Chemicals Limited vs CIT (ITA No. 459/JP/12 & others dated 28.10.2016). In light of the said decisions, DR argued that in view of amendment in section 80A(6) & 80IA(8) of the Act, decisions rendered prior to the amendment were inapplicable for AY 2013-14 onwards. In this regard, it is submitted that the coordinate bench of the ITAT, Jaipur in all later judgments in the case of the same assessee including in DCIT vs Shree Cement (ITA No.

142/JP/2023), related to the assessment year 2014-15, has reiterated its reliance on the Jurisdictional Rajasthan High Court decision in Shree Cement (supra) and on the past orders of the coordinate bench in favour of the assessee. The said judgment in DCIT vs Shree Cement (ITA No. 142/JP/2023) has also discussed the amended provisions of section 80A(6) and 80-IA(8) and dismissed the ground of the revenue. Relevant portion of the said judgment reads as follows:

> "30. We have heard the rival submissions, perused the material on record and gone through the orders of the revenue authorities and the case laws cited before us. At the outset, we find that this ground of the Revenue has already been decided by the Tribunal in earlier years in the assessee's own case. The copies of the orders were placed on record. With regard to the deduction under section 80-IA, power transfer price issue was decided in favour of the assessee vide consolidated order of the Tribunal, Jaipur for the assessment year 2011-12 dated 10.08.2020 in ITA No. 1394/JP/2019 wherein the Coordinate Bench followed the earlier orders of the Tribunal, Jaipur for the AY 2007-08 to 2009-10 dated 27.01.2014 in IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 ITA Nos. 503, 505/JP/2012 and vide order dated 27.04.2016 for the AY 2010-11 in ITA No. 445/JP/2014.
>
> 30.1. We further noticed that the orders of the Tribunal dated 27.01.2014 and 27.04.2016 had been confirmed by the Hon'ble Rajasthan High Court vide orders dated 22.08.2017 in DB IT Appeal No. 85/2014 and order dated 22.08.2017 in DB IT Appeal No. 227/2016 respectively.
>
> 30.2. The Coordinate Bench of the Jaipur Tribunal in ITA No. 1394/JP/2019 dated 10.08.2020 while dealing with the matter, had decided the ground of the Revenue by observing at para 2.12 to 2.15 as under:-
>
> "2.12. We have carefully gone through the orders of the Tribunal in assessee's own case for the above assessment years wherein issue with regard to deduction u/s 801A has been dealt with by the Tribunal in its order dated 27-01-2014 for the A.Y. 2007-08 to 2009-10 at page 15 in para 13 and at page 39 in para 46 of the order. Similarly for the A.Y. 2010-11, the Tribunal has dealt with the issue in its order dated 27-04-2016 at pages 7 & 8 of its order.
>
> .....
>
> 2.15. We had also gone through the order of Hon'ble Rajasthan High Court dated 22-08-2017 wherein the order of the Tribunal was confirmed by Hon'ble Rajasthan High Court for all the three years i.e. A.Y. 2007-08 to A.Y. 2009-10. We also observe that provisions of Section 80IA(8) read with Section 80A(6) require that the value of captive consumption of goods supplied by eligible undertaking to any other undertaking has to correspond with market value and that once the value adopted by the assessee is termed as market value there is no provision under the law for substituting market value adopted by the assessee with any other value. The AO is not

permissible to substitute the said rate with another sale rate in spite of acknowledging that the method adopted by the assessee also constitutes market value. Now coming to the method adopted by the Ld. CIT(A) vide his order dated 15-11- 2019, we observe that the Ld. CIT(A) has adopted average annual landed cost of electricity purchased by the Cement Unit of the assessee from the State Grid as the market value. While determining the said market value, Ld. CIT(A) has placed reliance on the decision of ITAT in assessee's own case in A.Y. 2007-08 to 2009-10 vide order dated 27-01 2014. The Ld. CIT(A) has stated that as per clause (b) of para 13 of the order of ITAT, value at which the assessee has sold power to State Grid or third party does not constitute market value in terms of Explanation to Section 801A(8). As per the order of Tribunal, the value adopted by the assessee under the bilateral contract with the independent third party has been specifically mentioned to be stated to constitute market value in terms of Explanation to Section 80IA(8) read with Section 80A(6) of I.T. Act. Thought it cannot be ruled out that the average annual landed cost of electricity purchased by the Cement Unit of the assessee from the State Grid can also be one of the market value in terms of Section 801A(8) read with Section 80A(6) of I.T. Act since it represents rate at which power would have been sold, if it had not been supplied to the Cement Unit of the assessee. However, Para 13

(c) & (d) states that where basket of market value is available, it is on the discretion of the assessee to adopt any one of them as market value and once the assessee has adopted a market value, Revenue is not permitted to substitute the same with another IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 value. Overlooking Para 13(a), (c) & (d) of the order of ITAT, the ld. CIT(A) chose to rely only on Para 13(b) of the order and here also ld.CIT(A) has misinterpreted the decision of this Bench. The Id. CIT(A) has to consider the order of the ITAT in entirety and cannot rely merely on Para 13(b) while omitting to consider Para 13(a), (c) & d).

We further find from the order of both AO as well as Id. CIT(A) that neither the AO nor Id. CIT(A) has disputed the market price as adopted by the assessee. They have simply replaced the same with their own derived market price which is not permissible under the law. As already noted that the transfer price of power as computed by the assessee satisfies the criteria of Market Value as defined in terms of Section 80IA(8) of the Act as well Section 80A(6) of the Act. Hence, the Department cannot replace the said market value with any other value. Hence respectfully following the binding of Hon'ble High Court and the Coordinate Bench of Tribunal (supra), we delete the disallowance, as made by the AO u/s 143(3) and partly upheld by ld. CIT(A) on account of deduction claimed u/s 80IA of the Act." .....

30.5. The ld. A/R of the assessee during the course of the hearing pleaded that Section 801A(8) & Section 80A(6) prior and subsequent to the amendment made vide Finance Act 2012 are the same. The trigger of these provisions can be invoked only if the transaction recorded in the books of eligible business does not correspond to the market value. Further, the concept of Market Value also remains the same as the term 'Open market Value' remains same post amendment as well. The ld.

A/R also submitted that post introduction of the Section 92BA of the Act, the definition of 'market value' has been amended under Section 80IA(8) of the Act to provide the assessee with an option to compute the market value of goods or services based

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

(ii) the arm's length price as defined in clause (ii) of Section 92F.

Since the statute has itself provided the assessee with an option to compute market value under either of the two clauses, market value computed based on clause (i) i.e., the price that such goods or services would ordinarily fetch in the open market still holds good. Hence, there has been no change in definition of market value even after the introduction of provisions of specified domestic transactions.

30.6 The ld. A/R further pleaded that even the transfer price adopted by the assessee in the instant case represented the arm's length price as per the definition of Section 92F of the Act. In support of his contention he relied upon order of Ld. CIT (Appeals) which is reproduced below:

> "8.13 A bare reading of the above amended provision shows that the definition of market value as per Sec 80-1A(8) has been amended to provide an option to compute the market value of goods or services based on the price that such good or services would fetch in the open market or the arm's length price as defined in clause (ii) of Sec. 92F. It is observed that there is no change in the meaning of market value' even post introduction of Sec 92BA read with Sec. 92F of the Act. This also finds support from Guidance Note on Report us 92E of the Income Tax Act, 1961(Transfer Pricing), 2020 issued by the Institute of Chartered Accountant of India which provides that IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 arm's length price is the price at which independent enterprises deal with each other, where the conditions of their commercial and financial relations ordinarily are determined by market forces. Further, Para 1.2 of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (July 2017) (OECD Guidelines) also provides that the commercial) relation in a transaction between two independent enterprises are ordinarily determined by market forces. Hence, the basic element of price being ordinarily determined by the market forces, clearly continues even in the amended definition of market value. Accordingly, all the judicial pronouncements rendered in context of the market value of power prior to introduction of specified domestic transactions would still hold good. 8.14 Therefore, price which is considered to be at market value prior to the amendment cannot be said to be NOT 'market value' post introduction of Sec. 92BA of the Act. The definition of market value as per Sec. 80-IA(8) means the market value of goods or services based on the price that such goods or services would fetch in the open market; or the arm's length price as defined in clause (ii) of Sec. 92F. Therefore, it is observed that the intent of the law remains same even after introduction of Sec. 92BA. This view has been duly upheld in DCIT vs. M/s Balarampur Chini Mills Limited (ITA No 1672/Kol/2019] for AY 2016-17 and

also in Star Paper Mills Limited vs. DCIT [ITA No. 127/Kol/2021 (AY 2016-17) dated 26-10-2021] wherein it is held as under :

"24. The contention of the ld. CIT. D/R that the above referred decisions are not applicable since they were rendered in the context of open market value' and not 'arm's length price is found to be misplaced. We agree with the ld. A/R of the assessee that, the 'open market value' standards and 'arm's length price' standards would ordinarily yield the same results, unless the considerations and rules involved are different. On this particular issue of determination of the transfer price of power u/s 80-IA(8) of the Act, we note that the considerations taken into account under the open market valuation standards by the High Courts in the above decided cases (supra) are consistent with the considerations and guidelines under the arm's length standards set out in Chapter X of the Act and therefore the ratio laid down in the above decisions (supra) indeed applies in the present case as well."

8.15 As far as mode of computation of transfer price of power transferred from eligible unit to other eligible/non-eligible units of the appellant by applying CUP method is concerned, appellant submits that the rate at which power is sold by the Grid to various manufacturing units has been judicially held to be market value of power as per the provision of sec. 80IA(8) of the Act. The ld. A/R relied upon following case laws in this regard :

a) Nectar Lifesciences Limited vs ACIT (AY 2013-14) [ITA No 567/Del/2019/ dated 13-09-2021): The ITAT, Delhi held that held that electricity available to a customer from Grid at a specific rate corresponds to 'market value' and can be used for benchmarking the transaction for transfer of power from eligible unit to the manufacturing units of the assessee.

b) Reliance Industries Ltd. vs ACIT [ITA No 7299/Mum/2017 (AY 2013-14): ITAT, Mumbai rejected the Revenue's stand that 'market rate' duly applied for purpose of IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 Sec 80-IA(8) of the Act shall change for the purpose of domestic transfer pricing regime and upheld the rate at which power is sold by the Grid to the manufacturing unit of the appellant to be at an arm's length price.

c) Star Paper Mills Limited vs. DCIT (supra); Kolkata ITAT held that the key factor in the application of CUP method is 'product comparability'. Since manufacturing units procured power throughout the year from CPP as well as unrelated external party i.e. Grid in the same geographical location, it fulfills the internal CUP parameters based on similarity of geographical location between AE and non-AE transaction.

d) M/s. Shahi Exports Pvt. Ltd vs. ACIT (supra): ITAT, Delhi held that that for the purpose of claiming deduction under section 801A of the Act the rate should have been the rate charged by the electricity board to its consumers .....

As these Judgements dealt with the identical issue of 'market value' u/s 80IA(8) and facts are also similar as the case of the appellant, therefore, appellant's reliance on these judgement is found correct and applicable to the present case. 8.16 Thus, the finding of the TPO that the appellant has not complied with the provisions of Sec. 80A(6) is found to be not correct. Sec. 80A(6) states that the 'market value' of goods or services means the arm's length price as defined in Sec 92F(ii) of the Act, if it is a specified domestic transaction. Meaning of arm's length price is identical to the meaning of open market value and it produces the same result. Hence, method adopted by the appellant for computation of transfer price of power is in accordance with the provisions of Sec. 80A(6) and 80-IA(8) r.w. Sec. 92F of the Act."

30.7. We find force in the argument of the ld. A/R and the observations as made by CIT (Appeals). The provisions of the Act give the assessee an option to adopt the transfer price of power in accordance with any of the clause as stated under section 80-IA(8) of the Act i.e. either as goods or services would ordinarily fetch in the open market or the ALP as defined in Section 92F(ii) of the Act.

30.8. It is further observed form the order of ld CIT(A) that 'open market value' standards as stated under amended section 80IA(8) and 'arm's length price' standards as stated under section 92F would ordinarily yield the same results. While upholding the said principle ld. CIT(Appeals) has referred to various judicial pronouncements which are discussed herein below:

> In the case of Star Paper Mills Limited vs. DCIT (ITA No.127/Kol/2021 dated 26- 10-2021) following was held by the Kolkata Tribunal:
>
> " 24. The contention of the ld. CIT D/R that the above referred decisions are not applicable since they were rendered in the context of 'open market value' and not arm's length price is found to be misplaced. We agree with the ld. A/R of the assessee that, the 'open market value' standards and 'arm's length price' standards would ordinarily yield the same results, unless the considerations and rules involved are different. On this particular issue of determination of the transfer price of power us 80-IA(8) of the Act, we note that the considerations taken into account under the open market valuation standards by the High Courts in the above decided cases (supra) are consistent with the considerations and guidelines under the arm's length standards set IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 out in Chapter X of the Act and therefore the ratio laid down in the above decisions (supra) indeed applies in the present case as well.

...

30.9. In light of above, we can conclude that ld. CIT(A) has rightly held that meaning of arm's length price as required under section 92BA read with section 92F is identical to the meaning of "open market value" as defined in Section 80-IA(8) of the Act and accordingly all the judicial pronouncements and principles held therein, rendered before the amendment brought under section 80-IA(8) of the Act including that of Hon'ble Jurisdictional High Court and Jaipur Tribunal

in assessee's own case for earlier year would equally apply for the year under consideration post amendment brought under section 80IA(8) of the Act.

30.10. Considering that TPO has disputed the Grid rate not to be the market value in terms of provisions of Section 80A(6) of the Act, we would like to state here that that unlike Section 80IA(8), the word "OR" is missing in provisions of Section 80A(6) of the Act. It is noted that as per provisions of Section 80A(6), if any goods or services whether sold or acquired falls within the category specified domestic transactions of Section 92BA then in such case it is mandatory to adopt market value as per clause (iii) of the aforesaid section i.e. as per Section 92F of the Act. Since, it has already been held that the Grid rate represents market value for the purpose of Section 92F of the Act, it can be concluded that the same represents arm's length price for the purpose of Section 80A(6) of the Act. 30.11. The ld. D/R in his submissions relied strongly on the order of TPO and the method adopted by TPO for determining market rate of power. According to ld. D/R, TPO has adopted the rate of power at which Distribution companies purchase power from the Generating companies. We find that this aspect has also been dealt with by ld. CIT(Appeals) in his order wherein he has held that the sale rate of Generating Companies does not represent actual market value. .....

30.12. The ld. A/R of the assessee also submitted that the rates at which power is purchased by distribution companies from generation companies are the rates charged by generation companies to middlemen (i.e. B2B business models) which are governed by altogether different level of market and are therefore not comparable to the rates which are charged to ultimate consumer (B2C Business Models), Further, each of the entities involved in the power market (engaged in generation of power, transmission, distribution as well as trading of power) are regulated by separate regulatory provisions thus it is not appropriate to compare the rates at which the generating companies sell power to other licensees as these licensees are not the ultimate consumers as in the case of assessee where the CPPs transfer power directly to the ultimate industrial consumer i.e. the manufacturing units of assessee. 30.13. Further, the aspect as to why rate at which power is sold to 3rd parties including Power distribution companies should not be considered as internal CUP and hence considered for computing arm's length price under the Transfer Pricing regulations, needs to be dealt with. The ld. A/R submitted that sale to 3rd party by the power unit is not comparable with the transaction of captive consumption of power by the Cement manufacturing unit due to various factors. Power undertaking provides power on long term supply basis unlike power sold to 3rd parties which are for a short term period. There is no long term commitment available to 3rd parties from Power units unlike available to CMU. This assured long term supply of committed power by the Power unit to the Cement Unit IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 cannot be compared with power sold to 3rd parties where there are no such commitments.....

.....

30.14. In light of above discussion we are of the view that the ld. CIT(A) has rightly held that sale rate of Generating Companies does not represent actual market value. 30.15. We, thus, respectfully, following the orders of the Hon'ble Jurisdictional Rajasthan High Court and the consistent view taken by the Coordinate Bench of the Tribunal, Jaipur, and the discussions made herein above, we find no infirmity in the order of the ld. CIT (A), accordingly the order of the ld. CIT (A) is upheld.

The ground of the Revenue is dismissed."

In view of the above judgment, the reliance placed by the Ld. DR on the said ITAT judgment (in ITA no 162, 178, 181, 182/JP/2016 dt 28.12.2017) is flawed and also the contention of the DR that the appellant has not complied with the provisions of Sec. 80A(6) is devoid of any merits and contrary to the facts of the case. Section 80A(6) states that the 'market value' of goods or services means the arm's length price as defined in Sec 92F(ii) of the Act, if it is a specified domestic transaction. Meaning of arm's length price is identical to the meaning of open market value between persons other than associated enterprises, in uncontrolled conditions; and it produces the same result. Hence, method adopted by the appellant for computation of transfer price of power is in accordance with the provisions of Section 80A(6) & 80-IA(8) r.w.s. 92F of the Act.

Hence, in the above referred case, the ITAT, Jaipur bench, relying on the Jurisdictional High Court order and past orders of coordinate bench of ITAT, Jaipur in favour of the assessee, has dismissed the ground of the revenue even in view of the amended provisions of section 80A(6) and section 80-IA(8). As such, the Ld. DR's contention in this regard is devoid of any merits and should be rejected."

7.6 We have heard both the sides, perused the material available on record, the orders of the lower authorities and considered the judicial pronouncements cited including the orders passed by this Coordinate Bench in the earlier years. We find that the Hon'ble Supreme Court in CIT vs Jindal Steel and Power Ltd. [2024] 460 ITR 162 categorically held that power supplied by the SEBs to the industrial consumers should be construed to be the market value of electricity. The Hon'ble Supreme Court also held that it should not be compared with the rate of power sold to or supplied to the IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 SEBs since the rate of power to a supplier cannot be the market rate of power sold to a consumer in the open market. The relevant extract reads as below:

> "28. Thus, market value of the power supplied by the assessee to its industrial units should be computed by considering the rate at which the State Electricity Board supplied power to the consumers in the open market and not comparing it with the rate of power when sold to sa 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. .....
>
> 34. That being the position, we have no hesitation in answering this issue in favour of the assessee and against the revenue."

7.7 The contentions of Ld. DR that Supreme court decision in case of Jindal Steel & Power Ltd. (supra) is not having binding precedent for AY 2013-14 onwards, we find that the coordinate bench of the Hon'ble Mumbai Tribunal in DCIT v/s JSW Energy Ltd. [2026] 182 taxmann.com 201 (Mumbai - Trib.) had the occasion to examine issues w.r.t. the applicability of Hon'ble Supreme Court decision in Jindal Steel & Power Ltd (supra) vis-à-vis the amended provisions of Sections 80A(6) and 80-IA(8).

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 The Hon'ble Tribunal, after examining the amended provisions and Hon'ble Supreme Court decision in Jindal Steel & Power Ltd (supra), dismissed the ground of the Revenue and held that "Thus no contrary view can be taken even post amendments by Finance Act, 2012, if the "market value" still can be ascertained as per the price available in the open market, and the same should be adopted." Relevant portion of the decision reads as below:

> "13.3. From the above it is clear that, the Explanation to Section 80IA defines the term "Market Value" in relation to any goods or services can be calculated in two ways or can be calculated by adopting two mechanisms:-
>
> (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 section 92BA.

13.4. From the above it is noted that, "or", is dividing the two clauses under Explanation to Section 80IA which clearly indicates the intention of the legislature to give an option to the assessee entitled to claim deduction u/s 80IA(8) to choose either of the two mechanisms.

13.5. If in a scenario, the availability of the market value that one would ordinarily fetch in the open market is not possible to be determined then, the second option is always available with the assessee. For instance, if there are certain unique services which have been transferred or any

unique goods or goods produced with patented IPR or intangibles where the market rate which can ordinarily fetch in the open market is not available, or where market value is not available in the open market, then market value has to be determined in terms of Sub-Clause (ii). If such option is not available then Ld.AO cannot ascertain the market value of goods and services. However, if market value is available on such goods and services which are available in the open market, then same can be adopted for the purpose of Section 80IA(8).

13.6. Further, the different manner of treatment for determination of "market value"

> becomes evident glaring when Explanation to section 80IA (8) is juxtaposed with section 80A(6). Explanation to Section 80A(6) does not provide the word "or" and all the 3 clauses therein used for situation specific have been made separate and disjunctive from other clauses. For the sake of ready reference Sub-Section (6) of Section 80A (6) alongwith Explanation reads as under:-
>
> "(6)[Notwithstanding anything to the contrary contained in section 10-A or section 10-

AA or section 10-B or section 10-BA or in any provisions of this Chapter under the heading "C.-Deductions in respect of certain incomes", where any goods or services IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 held for the purposes of the undertaking or unit or enterprise or 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 undertaking or unit or enterprise or eligible business and, the consideration, if any, for such transfer as recorded in the accounts of the undertaking or unit or enterprise or eligible business does not correspond to the market value of such goods or services as on the date of the transfer, then, for the purposes of any deduction under this Chapter, the profits and gains of such undertaking or unit or enterprise or eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date. Explanation. - For the purposes of this sub-section, the expression "market value",-

(i) in relation to any goods or services sold or supplied, means the price that such goods or services would fetch if these were sold by the undertaking or unit or enterprise or eligible business in the open market, subject to statutory or regulatory restrictions, if any;

(ii) in relation to any goods or services acquired, means the price that such goods or services would cost if these were acquired by the undertaking or unit or enterprise or eligible business from the open market, subject to statutory or regulatory restrictions, if any.]

(iii) 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." 13.7. From the plain reading of the aforesaid Explanation hereinabove, one can clearly note the difference in Explanation to Section 80IA (8). In Section 80IA(8) the expression "market value" has been elaborated in the Explanation in three sub-clauses word "or"

used, albeit the three clauses are separated by using semicolon, which means in these specific transactions "market value" has to be ascertained and determined in that particular manner only and there is no option for "or". Thus, difference in treatment in different sections cannot be lost sight of while interpreting the provisions. 13.8. In our view, the word "or" appearing between two subclauses in Explanation to Section 80IA(8) cannot be inferred that after the introduction of SDT from A.Y.2013-14 only sub-clause (ii) alone can be applied. The use of the word "or" can be interpreted as:

> (a) both manner are available with the assessee to demonstrate that market value of the goods and services has to be either by showing that the price of such goods and services is in consonance with the price available in the open market; or
>
> (b) if assessee is not able to establish the price available in the open market, then the price of goods and services has to be established through arm's length principle u/s 92CA/92F. It also means that, if the price of the transfer of goods and services is in consonance with the price available in the open market then the profits of the eligible business shown as per this price is eligible for deduction and in that case the second option may not be necessary.

.....

15.1. The argument advanced by the Ld. DR is that the decision of the Hon'ble Supreme IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 Court in the case of Commissioner of Income-tax v. Jindal Steel & Power Ltd. [2023] 157 taxmann.com 207/[2024] 460 ITR 162/297 Taxman 253 (SC)/468 ITR 162 (Bombay) is very little to do with the controversy at hand, since it dealt with the interpretation of law prior to the introduction of Clause (ii) to Explanation to Section 80IA, therefore the principles of the judgment is no longer applicable. Be that as it may, if one goes through the judgment of the Hon'ble Supreme Court and also on deeper scrutiny, then the stand of the Revenue and its reliance of Clause (ii) to Explanation to Section 80IA stands jettisoned by the findings of the Hon'ble Court's decision in the Jindal Steel & Power Ltd (supra). While holding that the price at which electricity sold to SEBs should be taken as market value, the Hon'ble Supreme Court defined the phrase "open market" in the following manner: -

> "23. This brings to the fore as to what do we mean by the expression "open market"

which is expression not defined.

24. Black's Law Dictionary, 10th Edition, defines the expression "open market" to mean a market in which any buyer or seller may trade and in which prices and product availability are determined by free competition. P Ramanatha Aiyer's Advanced Law Lexicon has also defined the expression "open market" to mean a market in which goods are available to be bought and sold by anyone who cares to. Prices in an open market are determined by the laws of supply and demand.

25. Therefore, the expression "market value" in relation to any goods as defined by the explanation below the proviso to sub-section (8) of Section 80-1A would mean the price of such goods determined in an environment of free trade or competition.

> "Market value" is an expression which denotes the price of a good arrived at between a buyer and a seller in the open market ie where the transaction takes place in the normal course of trading. Such pricing is unfettered by any control or regulation, rather, it is determined by the economics of demand and supply."

24. The Hon'ble Supreme Court also held that price at which electricity is sold to SEBs, that is, distribution company selling the power to SEBs, (which precisely has been done by the TPO here in this case), cannot be considered as "market value" for which their Lordships have given reasons as to why it is tainted. The Apex Court observed as under:-

> .....
>
> 15.2. The Hon'ble Supreme Court also held that price at which electricity is sold to SEBs, that is, distribution company selling the power to SEBs, (which precisely has been done by the TPO here in this case), cannot be considered as "market value" for which their Lordships have given reasons as to why it is tainted. The Apex Court observed as under:
>
> "26. Under the electricity regime in force, an industrial consumer could purchase electricity from the State Electricity Board or avail electricity produced by its own captive power generating unit. No other entity could supply electricity to any consumer A private person could set up a power generating unit having restrictions on the use of power generated and at the same time, the tariff at which the said power plant could supply surplus power to the State Electricity Board was also liable to be determined in accordance with the statutory requirements. In the present case, as the electricity from the State Electricity Board was inadequate to meet power requirements of the industrial units of the assessee, it set up captive power plants to supply electricity to its industrial units. However, the captive power plants of the IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 assessee could sell or supply the surplus electricity (after supplying electricity to its industrial units) to the State Electricity Board only and not to any other authority or person. Therefore, the surplus electricity had to be compulsorily supplied by the assessee to the State Electricity Board and in terms of Sections 43 and 43A of the 1948 Act, a contract was entered into between the assessee and the State Electricity Board for supply of the surplus electricity by the former to the latter. The price for supply of such electricity by the assessee to the State Electricity Board was fixed at Rs. 2.32/- per unit as per the contract. This price is, therefore, a contracted price. Further, there was no room or any elbow space for negotiation on the part of the assessee. Under the statutory regime in place, the assessee had no other alternative but to sell or supply the surplus electricity to the State Electricity Board. Being in a dominant position, the State

> Electricity Beard could fix the price to which the assessee really had little or no scope to either oppose or negotiate Therefore, it is evident that determination of tariff between the assessee and the State Electricity Board cannot be said to be an exercise between a buyer and a seller in a competitive environment or in the ordinary course of trade and business i.e. in the open market. Such a price cannot be said to be the price which is determined in the normal course of trade and competition."

15.3. Having observed so, thereafter the Hon'ble Supreme Court further opined and held that if the industrial units of the assessee did not have the option of obtaining power from the captive power plants of the assessee, then in that case it would have had to purchase electricity from the State Electricity Board and in such a scenario, the industrial units of the assessee would have had to purchase power from the State Electricity Board at the same rate at which the State Electricity Board supplied to the industrial consumers and accordingly, the Hon'ble Supreme Court held as under:-

> "28. Thus, market value of the power supplied by the assessee to its industrial units should be computed by considering the rate at which the State Electricity Board supplied power to the consumers in the open market and not comparing it with the rate of power when sold to a supplier is 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 80-1A 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."

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 15.4. Thus, the Hon'ble Supreme Court categorically held that power supplied by the SEB to the industrial consumers should be construed to be the market value of electricity. The Hon'ble Supreme Court held that, it should not be compared with the rate of power sold to or supplied to the SEBs since the rate of power to a supplier cannot be the market rate of power sold to a consumer in the open market, which AO has tried to do here in this case. According to the view taken by Hon'ble Supreme Court the definition of "market value" as given in Clause (i) is still relevant and existing in the statute. Thus, no contrary view can be taken even post amendment by Finance Act, 2012, if the "market value" still can be ascertained as

per the price available in the open market, and the same should be adopted. 15.5. As noted hereinabove in para 13.1., based on the above discussions, we do not find any merit in the arguments advanced by Ld. DR on this issue..... Accordingly, Ground Nos. 7-10 raised by revenue stands dismissed. "

(Emphasis supplied) 7.8 The Ld. DR also relied on the decision of the Hon'ble Apex Court in the case of GlaxoSmithkline, [2010] 195 Taxman 35 (SC) / [2010] 236 CTR 113 (SC) and argued that Section 92(BA) was introduced owing to the observation contained in the decision of Glaxo Smithkline (supra) that caused the introduction of specified domestic transaction u/s 80IA(8) and as such supported the proposition that the decision of the Hon'ble Supreme Court in the case of Jindal Steel & Power Ltd (supra) and earlier decisions of the ITAT in assessee's own case cannot be relied upon in view of amended provision. In this regard, we find that the coordinate bench of the Hon'ble Mumbai Tribunal in DCIT v/s JSW Energy Ltd. (supra) had the occasion to examine this issue also where the Hon'ble Tribunal, after considering the judgment in GlaxoSmithkline (supra), has reaffirmed the view taken by the Hon'ble Supreme Court in Jindal Steel & Power Ltd (supra) even post amendments as contemplated by the Ld. DR and held as under:

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 "14. The contention of the Revenue has been that now Section 92(BA) has been introduced owing to the observation contained in the decision of the Hon'ble Supreme Court in the case of CIT v. Glaxo Smithkline Asia (P.) Ltd. [2010] 195 Taxman 35 that caused the introduction of specified domestic transaction u/s.80IA(8). For the sake of ready reference, the relevant observation of the Hon'ble Supreme Court reads as under:-

"6. In order to reduce litigation, we are of the view that certain provisions of the Act, like section 40A(2) and section 80-IA(10), need to be amended empowering the Assessing Officer to make adjustments to the income declared by the assessee having regard to the fair market value of the transactions between the related parties. The Assessing Officer may thereafter apply any of the generally accepted methods of determination of arm's length price, Including the methods provided under Transfer Pricing Regulations. However, in a number of matters, we find that, many a times, the Assessing Officer is constrained by non-maintenance of relevant documents by the taxpayers as, currently, there is no specific requirement for maintenance of documents or getting specific transfer pricing audit done by the taxpayers in respect of domestic transactions between the related parties The suggestions which need consideration are whether the law should be amended to make it compulsory for the taxpayer to maintain books of account and other documents on the lines prescribed under rule 10D of the Income-tax Rules in respect of such domestic transactions and whether the taxpayer should obtain an audit report from his Chartered Accountant so that the taxpayer maintains proper documents and requisite books of account reflecting the transactions between related entities as at arm's length price based on generally accepted methods specified under the Transfer Pricing Regulations.

> Normally, this Court does not make recommendations or suggestions. However, as stated above, in order to reduce litigation occurring in complicated matters, we are of the view that the question of amendment, as indicated above, may require consideration expeditiously by the Ministry of Finance. In the meantime, CBDT may also consider issuing appropriate instructions in that regard.
>
> 7. Accordingly, we direct the Registry to forward copies of this Order both to the Ministry of Finance and CBDT for consideration."

15.1. The argument advanced by the Ld. DR is that the decision of the Hon'ble Supreme Court in the case of Commissioner of Income-tax v. Jindal Steel & Power Ltd. [2023] 157 taxmann.com 207/[2024] 460 ITR 162/297 Taxman 253 (SC)/468 ITR 162 (Bombay) is very little to do with the controversy at hand, since it dealt with the interpretation of law prior to the introduction of Clause (ii) to Explanation to Section 80IA, therefore the principles of the judgment is no longer applicable. Be that as it may, if one goes through the judgment of the Hon'ble Supreme Court and also on deeper scrutiny, then the stand of the Revenue and its reliance of Clause (ii) to Explanation to Section 80IA stands jettisoned by the findings of the Hon'ble Court's decision in the Jindal Steel & Power Ltd (supra). While holding that the price at which electricity sold to SEBs should be taken as market value, the Hon'ble Supreme Court defined the phrase "open market" in the following manner: -

> "23. This brings to the fore as to what do we mean by the expression "open market"

which is expression not defined.

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23

24. Black's Law Dictionary, 10th Edition, defines the expression "open market" to mean a market in which any buyer or seller may trade and in which prices and product availability are determined by free competition. P Ramanatha Aiyer's Advanced Law Lexicon has also defined the expression "open market" to mean a market in which goods are available to be bought and sold by anyone who cares to. Prices in an open market are determined by the laws of supply and demand.

25. Therefore, the expression "market value" in relation to any goods as defined by the explanation below the proviso to sub-section (8) of Section 80-1A would mean the price of such goods determined in an environment of free trade or competition.

> "Market value" is an expression which denotes the price of a good arrived at between a buyer and a seller in the open market ie where the transaction takes place in the normal course of trading. Such pricing is unfettered by any control or regulation, rather, it is determined by the economics of demand and supply."

24. The Hon'ble Supreme Court also held that price at which electricity is sold to SEBs, that is, distribution company selling the power to SEBs, (which precisely has been done by the TPO here in

this case), cannot be considered as "market value" for which their Lordships have given reasons as to why it is tainted. The Apex Court observed as under:-

> .....
>
> 15.2. The Hon'ble Supreme Court also held that price at which electricity is sold to SEBs, that is, distribution company selling the power to SEBs, (which precisely has been done by the TPO here in this case), cannot be considered as "market value" for which their Lordships have given reasons as to why it is tainted. ..... 15.3. Having observed so, thereafter the Hon'ble Supreme Court further opined and held that if the industrial units of the assessee did not have the option of obtaining power from the captive power plants of the assessee, then in that case it would have had to purchase electricity from the State Electricity Board and in such a scenario, the industrial units of the assessee would have had to purchase power from the State Electricity Board at the same rate at which the State Electricity Board supplied to the industrial consumers and accordingly, the Hon'ble Supreme Court held as under:-
>
> "28. Thus, market value of the power supplied by the assessee to its industrial units should be computed by considering the rate at which the State Electricity Board supplied power to the consumers in the open market and not comparing it with the rate of power when sold to a supplier is 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 80-1A 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 IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 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."

15.4. Thus, the Hon'ble Supreme Court categorically held that power supplied by the SEB to the industrial consumers should be construed to be the market value of electricity. The Hon'ble Supreme Court held that, it should not be compared with the rate of power sold to or supplied to the SEBs since the rate of power to a supplier cannot be the market rate of power sold to a consumer in the open market, which AO has tried to do here in this case. According to the view taken by Hon'ble

Supreme Court the definition of "market value" as given in Clause (i) is still relevant and existing in the statute. Thus, no contrary view can be taken even post amendment by Finance Act, 2012, if the "market value" still can be ascertained as per the price available in the open market, and the same should be adopted. 15.5. As noted hereinabove in para 13.1., based on the above discussions, we do not find any merit in the arguments advanced by Ld. DR on this issue..... Accordingly, Ground Nos. 7-10 raised by revenue stands dismissed."

(Emphasis Supplied) 7.9 Considering the facts of the case, in the light of the above decisions, we are of the considered view that the arm's length price as defined under section 92F of the Act is pari materia with open market price as provided even under the amended Section 80-IA(8) of the Act and the contention of the DR, that the decision of the Hon'ble Apex Court in the case of Jindal Steel & Power Ltd. (supra) is not applicable to the facts of the case of the appellant for the reason that it was rendered in the context of pre-amended section 80-IA of the Act, cannot be sustained and is liable to be rejected.

7.10 The Ld. DR has also placed reliance on the judgment of Hon'ble ITAT, Jaipur Bench in case of Shree Cement Limited (ITA No. 162, 178, 181, 182 / JP / 2016 in order dated 28/12/2017) which in turn relied on the case of M/s Chambal Fertilizers IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 & Chemicals Limited vs CIT (ITA No. 459/JP/12 & others dated 28.10.2016). In context of the said decisions, DR argued that in view of amendment in section 80A(6) & 80IA(8) of the Act, decisions rendered prior to the amendment were inapplicable for AY 2013-14 onwards, as those were in the context of "open market value" and not on arm's length price. In this regard, as submitted by the Ld. Counsel for the assessee, we find that the coordinate bench of the ITAT, Jaipur in a later judgment in the case of the same assessee in DCIT vs Shree Cement (ITA No. 142/JP/2023), related to the assessment year 2014-15, has reiterated its reliance on the Jurisdictional Rajasthan High Court decision in Shree Cement (supra) and also on the past orders of the coordinate bench in favour of the assessee. Relevant portion of the decision reads as follows:

> "30.7. We find force in the argument of the ld. A/R and the observations as made by CIT (Appeals). The provisions of the Act give the assessee an option to adopt the transfer price of power in accordance with any of the clause as stated under section 80-IA(8) of the Act i.e. either as goods or services would ordinarily fetch in the open market or the ALP as defined in Section 92F(ii) of the Act.
>
> 30.8. It is further observed form the order of ld CIT(A) that 'open market value' standards as stated under amended section 80IA(8) and 'arm's length price' standards as stated under section 92F would ordinarily yield the same results. While upholding the said principle ld. CIT(Appeals) has referred to various judicial pronouncements which are discussed herein below:
>
> In the case of Star Paper Mills Limited vs. DCIT (ITA No.127/Kol/2021 dated 26- 10-2021) following was held by the Kolkata Tribunal:

"24. The contention of the ld. CIT D/R that the above referred decisions are not applicable since they were rendered in the context of 'open market value' and not arm's length price is found to be misplaced. We agree with the ld. A/R of the assessee that, the 'open market value' standards and 'arm's length price' standards would ordinarily yield the same results, unless the considerations and rules involved IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 are different. On this particular issue of determination of the transfer price of power us 80-IA(8) of the Act, we note that the considerations taken into account under the open market valuation standards by the High Courts in the above decided cases (supra) are consistent with the considerations and guidelines under the arm's length standards set out in Chapter X of the Act and therefore the ratio laid down in the above decisions (supra) indeed applies in the present case as well. ...

30.9. In light of above, we can conclude that ld. CIT(A) has rightly held that meaning of arm's length price as required under section 92BA read with section 92F is identical to the meaning of "open market value" as defined in Section 80-IA(8) of the Act and accordingly all the judicial pronouncements and principles held therein, rendered before the amendment brought under section 80-IA(8) of the Act including that of Hon'ble Jurisdictional High Court and Jaipur Tribunal in assessee's own case for earlier year would equally apply for the year under consideration post amendment brought under section 80IA(8) of the Act.

30.10. Considering that TPO has disputed the Grid rate not to be the market value in terms of provisions of Section 80A(6) of the Act, we would like to state here that that unlike Section 801A(8), the word "OR" is missing in provisions of Section 80A(6) of the Act. It is noted that as per provisions of Section 80A(6), if any goods or services whether sold or acquired falls within the category specified domestic transactions of Section 92BA then in such case it is mandatory to adopt market value as per clause (iii) of the aforesaid section i.e. as per Section 92F of the Act. Since, it has already been held that the Grid rate represents market value for the purpose of Section 92F of the Act, it can be concluded that the same represents arm's length price for the purpose of Section 80A(6) of the Act.

30.11. The ld. D/R in his submissions relied strongly on the order of TPO and the method adopted by TPO for determining market rate of power. According to ld. D/R, TPO has adopted the rate of power at which Distribution companies purchase power from the Generating companies. We find that this aspect has also been dealt with by ld.

CIT(Appeals) in his order wherein he has held that the sale rate of Generating Companies does not represent actual market value. The relevant extract of the same is reproduced below:-

"8.18 The appellant in its submissions has also explained as to why the rates adopted by the TPO should not be considered.

.....

(3) Rate of sale of power by the generating companies-The rate at which Adani Power Rajasthan Ltd (APRL) and Raj West Power Limited (RWPL) supplies power to distribution companies is a regulated price which is determined by the State Electricity Regulatory Commission It is therefore not a market driven rate determined by forces of demand and supply and also does not denote rate available in the open market Power sold by generating company to a distribution company is a totally different business model as compared to the sale of power by the CPP, thus, it does not satisfy the comparability factors laid down in Rule 10B(2) and 10B(3) of the Income Tax Rules, 1962.

.....

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 30.14. In light of above discussion we are of the view that the ld. CIT(A) has rightly held that sale rate of Generating Companies does not represent actual market value.

30.15. We, thus, respectfully, following the orders of the Hon'ble Jurisdictional Rajasthan High Court and the consistent view taken by the Coordinate Bench of the Tribunal, Jaipur, and the discussions made herein above, we find no infirmity in the order of the ld. CIT (A), accordingly the order of the ld. CIT (A) is upheld. The ground of the Revenue is dismissed.

(Emphasis supplied) 7.11 It is noted that the Hon'ble Delhi High Court in the case of Pr. CIT vs DCM Shri Ram Ltd. (ITA 566/2023) which relates to AY 2014-15 [i.e. post amendment in Section 80-IA(8) and Section 80A(6)], upheld the reliance placed by the assessee on the decision of the Hon'ble Apex Court in the case of Jindal Steel and Power Ltd (supra) and held that the rates at which electricity was supplied by the SEBs to industrial consumers is the market value of the said supplies for the purposes of Sub-

section (8) of Section 80IA of the Act. The relevant extract of the decision of the Hon'ble Delhi High Court reads as below:

> "2. The Revenue had projected several questions of law for consideration of this court. However, this court had, by an order dated 02.05.2024, confined the present appeal to the following questions:
>
> A. Whether on the facts and circumstances of the case and law, the Hon'ble ITAT has erred in law and on facts in deleting the adjustment proposed by the TPO on account of ALP adjustment of specified domestic transactions from Associated Enterprises for the A.Y 2014-15?
>
> B. Whether ITAT was right in deleting adjustments made on account of transfer of power as per the provision of section 92F r.w.s 80IA of the Act without appreciating that there was suitable selling CUP rate from the central agency in the field of power trading?

***

57. We also consider it apposite to refer to the recent decision of the Supreme Court in Commissioner of Income-tax v. Jindal Steel & Power Ltd. [2023] 157 taxmann.com 207/297 Taxman 253/460 ITR 162 (SC). The principal issue involved in the said decision was the determination of market value of goods and services. In terms of Clause (i) of Explanation to Sub-section (8) of Section 80IA of the Act, the market value in relation to IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 goods and services would mean the price that such goods or services would ordinarily fetch in the open market. In the aforesaid context, the Supreme Court had considered the question of what would constitute an open market in the context of determining the market value of electricity supplied by captive power units of the assessee in that case. In that case, the assessee had entered into an agreement with the SEB of State of Madhya Pradesh to supply surplus electricity at the rate of Rs. 2.32/- per unit. However, the Assessee had computed the revenue from supply of electricity to its own unit at the rate of Rs. 3.72/- per unit. It was the Assessee's case that the market value of the electricity was Rs. 3.72/- per unit as that was the rate charged by the SEB for supply of electricity to industrial consumers including the Assessee. The learned ITAT had accepted the assessee's stand and had set aside the order passed by the CIT(A) rejecting the assessee's appeal in that regard. The High Court had also rejected the Revenue's appeal by referring to its earlier decision where the question of law had been answered against the Revenue and in favour of the Assessee. ***

59. As is apparent from the above, the Supreme Court had accepted the rates at which electricity was supplied by the SEBs to industrial consumers as being the market value of the said supplies for the purposes of Sub-section (8) of Section 80IA of the Act.

60. In view of the above, the questions of law are answered in favour of the Assessee and against the Revenue."

(Emphasis supplied) 7.12 Further, in the case of Principal Commissioner of Income-tax Central- 1 v.

Rungta Mines Ltd. - [2025] 176 taxmann.com 410 (Cal), which relates to AYs 2017- 18, 2018-19 and 2019-20, the Revenue contended that the facts were distinguishable from the Apex Court's decision in Jindal Steel and Power Limited (supra). However, the Hon'ble Calcutta High Court relied upon the binding precedent of the Hon'ble Supreme Court in CIT v. Jindal Steel & Power Ltd (supra) for the purpose of determination of arm's length price of specified domestic transaction of transfer of power by eligible undertaking to manufacturing undertaking of the assessee. The relevant portion of the judgment reads as below:

"19. The learned tribunal in the case of Star Paper Mills Limited Versus DCIT Circle 4 IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 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 Court in CIT Versus Jindal Steel and Power Limited. 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 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 IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 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."

7.12.1 Again, the Hon'ble Calcutta High Court in the case of Principal Commissioner of Income Tax Vs. Star Paper Mills Ltd., [2025] 172 taxmann.com 391, which relates to the AY 2018-19, wherein similar issues were raised by the dept.

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 w.r.t. Arm's length price of power in view of the amended provisions introduced by Finance Act 2012, relied upon the decision of the Hon'ble Supreme Court in the case of Jindal Steel & Power Ltd (supra) and dismissed the appeal of the revenue.

7.12.2 Thus, in the cases of Rungta Mines Ltd (supra) and Star Paper Mills Ltd (supra), the Hon'ble Calcutta High Court held that where assessee transferred power from its Captive Power Plants [CPPs] to non-eligible units and benchmarked the said transaction using average annual landed cost of electricity paid by its manufacturing units to State Electricity Boards [SEBs], since CPPs were established for captive use and not for sale to SEB's, CUP method, applied as aforesaid, was most appropriate method in determining the arm's length price as per the provisions of the Act including section 92BA of the Act.

7.13 We concur with assessee's submission that Hon'ble Supreme Court in para 32 of its judgment in case of Jindal Steel and Power Ltd (supra) has categorically held that the decision of Calcutta High Court in the case of ITC Ltd. (supra) will be of "no assistance to the revenue". Also, as referred hereinabove, there are multiple precedents including the cases of the Hon'ble Delhi High Court in PCIT v. DCM Shriram Ltd. (supra) and of the Hon'ble Calcutta High Court in Rungta Mines Ltd (supra) and Star Paper Mills Ltd (supra), along with judgments of the coordinate benches of the various Tribunal, for Assessment Year 2013-14 and onwards, which IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 were ruled in favor of the assessee and where grounds of the revenue were dismissed, relying on Hon'ble Supreme Court in case of Jindal Steel & Power Ltd.

(supra).

7.14 In light of the above discussions, coming to the contention of the Ld. DR or the TPO that the rate at which power is supplied by SEBs to industrial consumers is not to be considered as market value in terms of provisions of Section 80A(6) of the Act. We are of the view that unlike Section 80IA(8), the word "OR" is missing in provisions of Section 80A(6) of the Act. As per provisions of Section 80A(6), if any goods or services whether sold or acquired falls within the category specified domestic transactions of Section 92BA then in such case it is mandatory to adopt market value as per clause

(iii) of Section 92BA of the Act. Since, it has already been held in various decisions quoted above that the rate at which power is supplied by SEBs to industrial consumers represents market value for the purpose of Section 92F of the Act, and thus, it can be concluded that the same represents arm's length price for the purpose of Section 80A(6) of the Act.

7.15 In the light of the above decisions, we are of the considered view that the meaning of arm's length price as required under section 92BA read with section 92F is identical to the meaning of

"open market value" as defined in Section 80-IA(8) of the Act and accordingly, all the judicial pronouncements and principles held therein, IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 rendered before the amendment brought under section 80-IA(8) of the Act including that of Hon'ble Jurisdictional High Court, various High courts and benches of the tribunal including the coordinate bench of the Jodhpur Tribunal in assessee's own case for earlier years would equally apply for the year under consideration post amendment brought under section 80IA(8) and 80A(6) of the Act.

7.16 Accordingly, we hold that the contentions of the Ld. DR that decisions rendered prior to the amendment was inapplicable for AY 2013-14 onwards in view of the amended provisions, as those were in the context of "open market value" and not on arm's length price, is wholly misplaced and legally untenable.

7.17 We find that the similar ground has also been decided by the Coordinate Bench of the Tribunal in assessee's own case in ITA No. 184/Jodh/2012 dated 04.09.2017 for the assessment year 2008-09 to AY 2011-12, ITA No. 404 & 412/Jodh/2017 dated 22.02.2018 for the assessment year 2012-13 in para 144 to 149 of its order, in ITA No 127 & 128/Jodh//2022 for the AY 2017-18 & AY 2018-19 in para 14 in favour of assessee. We also find that this coordinate bench of the ITAT, Jodhpur, while allowing this issue of the appellant for the AY 2020-21 in ITA No. 623/Jodh/2024 in para 7.4, has relied upon the decision of the Hon'ble Supreme Court in the case of CIT v. Jindal Steel & Power Ltd (supra).

7.18 Respectfully following the decision of the Hon'ble Supreme Court in Jindal Steel IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 & Power Ltd (supra) and the decisions of the Coordinate Bench of the Tribunal in assessee's own cases including for the assessment year 2020-21 and also considering consistent view taken by the various benches of the Tribunal and High Courts, we delete the disallowance. Thus, this ground of appeal is allowed.

8. Ground Nos. 4 to 4.4 pertains to the disallowance of deduction u/s 80IA of the Act amounting to Rs. 10,56,99,413/- for generation and transfer of Steam.

8.1 The Ld. AR submitted that the eligible units of the Appellant transfer steam to the taxable units on a cost-to-cost basis, without charging any profit margin. The TPO concluded that since the arm's length price of power has already been computed which includes the cost of steam, the arm's length price of steam is held to be NIL.

Thus, the TPO made adjustment of Rs. 10,56,99,413/- in the TP order. The Assessee has explained in the TP study the process of generation of electricity as a whole, which includes steam as well, and also discussed the assets and risks involved in this as well. The ld. counsel for assessee reiterated during hearing that the issue is already decided by the Hon'ble Tribunal in favour of appellant for AYs- 2011-12, 2012- 13, 2017-18, 2018-19 [Para 18 CLPB Pgs. 256-260] and 2020-21 [Para 8.3 CLPB Pgs.

77-85].

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 8.2 On the other hand, the Ld. DR relied upon the order of the Assessing Officer/ Transfer Pricing Officer and had no further objection to the contentions made by the Ld. AR.

8.3 We have heard rival contentions, perused the material available on record and gone through the orders of the lower authorities as well as the orders passed by the Coordinate Benches in assessee's own cases in earlier years. We find that the matter is squarely covered by the decision of Coordinate Bench of the Tribunal in assessee's own case in ITA Nos. 404 & 412/Jodh/2017 dated 22.02.2018 for the assessment year 2012-13 wherein the Tribunal by following its earlier order in assessee's own case in ITA Nos. 179 & 184/Jodh/2014 dated 04.09.2017 for the assessment year 2008-09 adjudicated the issue in favour of the assessee vide para 64-65 as under :-

> 64. "We have heard the rival submissions and perused the material on record. We find that this issue now stands covered in favour of the Assessee in view of the judgment of the co-ordinate bench in the Assessee's own case dated 04.09.2017 for AY 2008-09, wherein it was held as under:-
>
> .....
>
> 270. Thus, respectfully following the decision of the Hon'ble Madras High Court as well as decision of the Coordinate Bench we confirm the order of the CIT(A) and dismiss this ground of Appeal of the Revenue. "
>
> 65. Hence, in view of the above ground No. 27 to 34 stands allowed in favour of the Assessee."

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 8.4 We find that the similar ground has also been decided by the Coordinate Bench of the Tribunal in assessee's own cases in ITA No 127 & 128/Jodh/2022 for the AY 2017-18 & AY 2018-19 vide para 18 and that the similar ground has also been decided by the Coordinate Bench of the Tribunal in assessee's own case in ITA No 623/Jodh/2024 for the AY 2020-21 vide para 8.3 to 8.5 in favour of assessee which reads as under:

> "8.3 We have heard rival contentions, perused the material available on record and gone through the orders of the revenue authorities. We find that the matter is squarely covered by the decision of Coordinate Bench of the Tribunal in assessee's own case in ITA Nos. 404 & 412/Jodh/2017 dated 22.02.2018 for the assessment year 2012-13 wherein the Tribunal by following its earlier order in assessee's own case in ITA Nos. 179 & 184/Jodh/2014 dated 04.09.2017 for the assessment year 2008-09 adjudicated the issue in favour of the assessee by observing in para 64-65, as under :-
>
> .....

> 8.4 We also find that the similar ground has also been decided by the Coordinate Bench of the Tribunal in assessee's own case in ITA No 127 & 128/Jodh//2022 for the AY 2017-18 & AY 2018-19 in para 18 in favour of assessee.
>
> 8.5 We, therefore, respectfully following the consistent view taken by the Coordinate bench of the Tribunal as referred hereinabove, allow this ground of the assessee."

8.5 Respectfully following the consistent view taken by the Coordinate bench of the Tribunal as referred hereinabove, we allow this ground of the assessee.

9. Ground Nos. 5 to 5.2 are related to allocation of head office expenses to eligible units.

9.1 Before us, the ld. Counsel for the assessee has submitted as under:-

> IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 "The Head Office expenses and common assets have no proximate connection with the industrial undertaking eligible for deduction under the Act. These expenses would have been incurred otherwise also had there been no tax benefit units in existence and these expenses represent common corporate expenditure which cannot be allocated or assigned to any particular unit or activity.
>
> The Ld. TPO, however, held that the assessee's submission that "no such allocation of HO expenses is required considering the eligible units are not dependent on head office" was not tenable as the use of head office by the tax holiday units is natural. The Ld. TPO has disagreed with the approach of the assessee and made adjustment for allocation of HO expenses on the basis of turnover as dealt in transfer pricing proceedings for earlier years.
>
> The appellant has complied with all the conditions as prescribed by these sections including the requirement of preparing the separate books of accounts for all such units by crediting all the incomes derived from such units and debiting the expenditure related to those units. The Appellant during assessment proceedings before the TPO, submitted that while preparing financial accounts of the exempt-units, all the expenses in relation to the respective units, such as salary and administrative expenses are duly considered.
>
> The Appellant also submitted that the coordinate bench of the ITAT, in assessee's own case for the assessment years 2005-06, 2006-07, 2008-09, 2011-12, 2017-18, 2018-19 and 2020- 21, has directed the Assessing Officer to re-work allocation of the expenses related to the director's fees, auditor's fees and donation for charity only to the tax holiday units. The coordinate bench in assessee's own case has also categorically held that turnover cannot be the basis for apportionment of Head Office expenses."

9.2 The Ld. DR relied upon the order of the Ld. TPO and had no further objection to the contentions made by the Ld. AR.

9.3 We have heard both the sides, perused the material available on record and gone through the orders of the lower authorities as well as the orders passed by the Coordinate Benches in earlier years. We find that the coordinate Bench of the Tribunal in assessee's own case in ITA Nos. 638 & 606/JU/2008 dated 24.04.2017 for the assessment year 2006-07 has adjudicated the issue by following its earlier order IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 in ITA No. 612/JU/2009 dated 10.04.2017 for the assessment year 2005-06 by observing in para 9.2 to 9.3 as under :-

"9.2 We have heard the rival contentions, perused the material available on record and gone through the order of the authorities below. The identical issue was in the ITA No. 612/JU/2009 we have decided this issue in para 10.2 by observing as under:-

"10.2 We have heard the rival contentions, perused the material available on records and gone through the orders of the authorities below. We find that the identical issue was in the year 2004-05 in ITA No. 235/JU/2008. The coordinate Bench has decided the issue in Para 17.9 holding as under:-

"17.9 We have heard the rival contention and perused the material available on record. It is settled law that when the assessee claims any allowable deduction the explanation and evidence submitted in this behalf is to be objectively considered by ld. AO. In case of any infirmity in the claim, the same should be effectively dealt and the claim should be denied by proper discharge of onus. Without effective rebuttal and objective consideration assessee's beneficial claim cannot be disallowed on assumptions and intendments. It is also settled jurisprudence that while interpreting the beneficial legislations a liberal approach should be adopted. This is so as a very strict interpretation will defeat the legislative intent of encouraging captive power plants in electricity starved nation in general and power short state of Rajasthan. Provisions of Sec. 80IA of the IT Act are undoubtedly beneficial in nature, so in case of ambiguity about its interpretation a liberal approach is mandates by settled judicial precedents. The undisputed facts which emerge from the record indicate that assessee by evidence and explanation brought on record objective material to demonstrate in this cae HO and other common assets have no proximate connection which the CPP, Debari which is an industrial undertaking eligible to deduction under section 80IA. The HO and other common assets existed even prior to installation of CPP. The alleged expenses represent general corporate expenditure which can't be allocated or assigned to an independent unit engaged in power generating activity on standalone basis. While reducing the deduction u/s 80IA, ld. AO has ignored the crucial term "derived from" used in sec. 80IA A term which became subject matter of judicial decision and settled by Hon'ble supreme Court. This crucial omission has resulted in AO's conclusion that:

(i) The proportionate depreciation of other common assets is allocable to be reduced from the profits of eligible CPP unit.

(ii) The proportionate part of the employees' remuneration and benefits, administrative and selling expense such a remuneration of managers, directors, auditors, financial advertisers, amenities and Head Officer assets is also require to be allocated to CPP Debari.

(iii) Ld. AO instead of establishing any direct of proximate relation between these unconnected proportionate expenses reduced them from eligible profits under a notion that even the remote and unconnected proportionate expenses are allocable.

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23

(iv) The ld. AO held that HO is not a profit earning centre and Captive Power Plant, Debari, is not a standalone unit, having independent functioning and a separate profit center and on such erroneous assumption reduced the deduction u/ 80IA by aforesaid expenses of other independent and functionally different units.

Ld. Counsel has demonstrated that other units of the Company cannot use the fixed assets, like permanent residential buildings of Udaipur unit which are wholly and exclusively for the operation of Udaipur unit only; there is no basis to assume that they were even impliedly used by other operating units including CPP. Consequently there being no direct nexus between two independent industrial units the question of proportionate apportionment of their user or depreciation to CPP does not arise. Moreover, it has been demonstrated that the Udaipur based office equipment, furniture, fixtures, computers, motor vehicles etc. are also exclusively used for the day to day working of Udaipur Unit and they can in no way be supposed to be used for CPP. Since respective units retain control over their assets, they have no occasion of user by CPP. Rom the facts and circumstances emerging form the record and contentions. We observe that:

a) No allocation of Ho and other expenses is justified since such expenditure on Ho and other units was incurred even prior to setting up of eligible CPP unit.

b) The assessee is primarily engaged in the activities of mining and manufacturing of Zinc and lead metals.

This business of the assessee is one and indivisible from CPP unit. In the absence of any direct nexus the apportionment is not mandated by the correct interpretation of sec 80IA.

c) It has not been rebutted that after the commencement of CPP activity there was no increase in the HO expense relatable to employee's remuneration & benefits an Administrative expense as a whole, in comparison to the earlier year. Rather HO expenses for the year under consideration have been reduced drastically. Thus there is no reason to assume any notional increase in these expenses after the commencement of CPP Debari, Consequently, the conclusion that impugned allocation of

expenses has no direct nexus with eligible CPP unit, has no basis or valid justification.

d) Apropos expenses like, rates & taxes, fees to auditors, cot auditors, directors travelling, reimbursement of corporate expense as well as consultancy charges etc., such expenses were required to be incurred irrespective of the CPP Unit.

e) Eligible profits of any industrial undertaking which exits on standalone footing, according to accepted accounting the legal principles, are to be computed after taking into account all the receipts and expenditure incurred only by it and not by notionally attributing the proportionate depreciation or administrative expenses on assumptions.

f) The aforesaid expenses of salary and wages, contribution to provident fund etc. and other benefits to employee' insurance, consultancy and other administrative expense as alleged by ld. AO, have in fact, been incurred at Udaipur Office for goods manufactured i.e. zinc and lead by the appellant . Consequently, such expenditure is deductible while computing the profit of assessee's manufacturing business of zinc and lead. Any part thereof cannot be hypothetically attributed to independent CPP unit situated at Debari. Such presumptive and notional reduction of claim u/s 80IA is arbitrary and unsustainable.

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23

g) The words "derived from" have been used by the Legislature in the restricted sense and therefore, there must be direct nexus between the expenditure and industrial activity. Since there is no direct nexus of the alleged expense with CPP unit, neither allocation nor reduction of 80IA claim has justification. It is settled law that allocation, if any, cannot be made by demonstration of direct nexus between alleged proportions of expenses with power generation operations of PP unit situate at Debari, ld. CIT(A) has rightly deleted the reduction in 80IA claim.

i) The Legislature has used the words "derived from" in contradiction to the words "attributable to" in other sections.

a. In the case of Cambay Electric supply Co vs. CIT 1978 CTR (SC) 50: (197)113 ITR 84 Hon'ble Supreme Court has squarely held that the Words "derived from" have been used by the legislature in restricted sense as the Words "attributable to" are much wider in meaning than the words "derived from".

b. Hon'ble Supreme Court in the case of IT vs. Sterling Foods (1999) 153 ITR CTR (SC) 439: (1999) 237 ITR 579 (SC) has held that or application of the words "derived from". There must be a direct nexus between the profits and the activity of the industrial undertaking, consequently, it is by now a settled proposition that remote or indirect nexus would not be sufficient for application of the words "derived from".

c. In the case of IT vs. Strawboard Manufacturing Co Ltd. {(1989) 177 ITR 43} in the context of deduction under section 80E, Hon'ble Supreme Court held that:

"The provision for rebate has been made for the purpose of encouraging the setting up of new industries. It is necessary to remember the when a provision is made in the context of a law providing for concessional rate of tax for the purpose of encouraging an industrial activity, a liberal construction should be put upon the language of the statute.

In our view, the controversy in question stands squarely covered by the case of Zandu Pharmaceuticals Works Ltd. (supra) in favor of the assesee. In this case assessee incurred expenditure for the R & D work in the HO and there were independent manufacturing units. Assessee claimed deduction u/s 80IA without allocating any proportionate expenses of HO Ld. AO adopted the same course as in the case of this assessee. It was held that the HO was maintained for the overall benefit of the manufacturing units only and HO was not a profit earning centre; it had no income other than the manufacturing units. Therefore, R& D expense incurred for the development of new drugs were assumed to be for the benefit of all manufacturing units. On this basis, ld. AO allocated proportionate and similarly reduced them from eligible income while calculating deduction u/s 80IA. CIT(A) and ITAT upheld AO's action rejecting the appellant's contention that the R & D expense incurred by HO had nothing to do with the eligible units and proportionate expenses should not be reduced while calculating deduction u/s 80IA. Hon'ble Bomaby High Court upheld assessee's claim. Ld. CIT(A) in this case while deleting the reduction from assessee's claim u/s 80IA has applied nearly similar observation. In view thereof no infirmity can be attributed to the order of ld. CIT(A) which is upheld. In the given facts, circumstances and legal position, we hold that the said HO Expenses with the eligible industrial undertaking i.e. CPP, therefore the unrelated proportionate HO expenses cannot be reduced while computing deduction u/s 80IA. This ground no. 12 of the Revenue is dismissed."

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 However, we find that the certain expenses which are common to both to the Head Office and Captive Power Plant has not been allocated. Therefore, the issue is restored to the file of the Assessing Officer for re-computation of reduction. The Assessing Officer would re-work allocation of the expenses related to the director's fees, auditor's fees and donation for charity. To this extent, the order of the Ld. CIT(A) is modified. This ground of the Revenue's appeal is partly allowed for statistical purposes."

9.3 There is no change into facts and circumstances. Therefore, taking a consistent view, we restore this issue to the file of the Assessing Officer for re-computing the reduction of deduction u/s 80IA. The Assessing Officer would restrict the apportionment to the extent of Director's fee, charity and donations. The Ground no. 8 is partly allowed as discussed hereinabove for statistical purpose."

9.3.1 The above view has also been affirmed by the Jodhpur Bench of the Tribunal in the assessee's own case in ITA No. 184/Jodh/2012 dated 04.09.2017 for the assessment year 2008-09 by observing vide para 277 as below:

> " 277. Having considered the submissions of the parties we find the contentions raised by the ld. A/R to be correct and note that one of disputes raised by the Assessee in the earlier order was also on the basis of allocation. However, we direct the Assessing Officer to apportion such expenditure on a reasonable basis and not on the basis of turnover as was done by him in the Assessment years. For this we find support from the decision of a Coordinate Bench in the case of ACIT vs. P.I. Industries (144 TTJ 353)(Jodhpur) where the Tribunal has disapproved the turnover basis for allocating common expenditure. In our opinion only such expenses should be attributed which have a direct bearing of the business activity. With these observations this ground of revenue is partly allowed."

9.3.2 On the very same issue the Coordinate Bench of the Tribunal in ITA No. 246/Jodh/2017 dated 04.09.2017 for the assessment year 2011-12 observed vide para 509 as under :-

> " 509. We find that similar issue has been considered by us in ground no. 11 of the Revenue's appeal for AY 2008-09 in ITA No. 184/Jodh/2012. For the reasons contained therein, we allow this ground of appeal of the assessee."

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 9.3.4 The same issue was decided by the Coordinate Bench of the Tribunal in assessee's own case in ITA No 127 & 128/Jodh//2022 for the AY 2017-18 & AY 2018- 19 vide para 22 in favour of assessee.

9.3.5 We also find that the similar ground has been decided by the Coordinate bench of the Tribunal in assessee's own case in ITA No. 623/Jodh/2024 for the AY 2020-21 vide Para 9.6 in favour of the assessee.

9.3.6 We, therefore, respectfully following the decisions as discussed above, following the earlier years' order of the coordinate Bench in assessee's own case, direct the Assessing Officer to re-work allocation of the expenses related to the director's fees, auditor's fees and donation for charity to the tax holiday units on the basis of manpower.

9.3.7 Accordingly, this ground is partly allowed for statistical purposes.

10. Ground No. 6 to 6.2 are related to disallowance of deduction claimed by the appellant under section 80-IA of the Act on Effluent Treatment Plants ("ETP") amounting to Rs. 24,21,59,598/-

10.1 Before us, the ld. Counsel for the assessee, inter alia, submitted as below which was also made before the revenue authorities: -

> IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 The Appellant has set up ETPs to treat effluents generated from its business units. During the various processes undertaken by the Appellant, the effluents generated from gas cleaning plant, sulphuric acid plant, anode and cathode washing, lead smelter, DM plant, cooling tower and power plant are treated in the ETP to neutralize the acidity and to

precipitate and remove metallic elements. The treated water is utilized by these units in various processes and zero discharge is maintained. The ETP units are a vital part of the operations ensuring zero discharge and ensuring compliance with the appellant's Health, Safety and Environment (HSE) Policy. The Appellant, in its TP documentation, substantiated the ALP of this transaction undertaken by applying the Other Method as the most appropriate method as per the provisions of section 92C of the Act.

The TPO rejected 'Other Method' applied by the appellant and instead sought to apply Cost Plus Method made adjustment of Rs.24,21,59,598/-.

The TPO rejected the benchmarking undertaken by the appellant applying 'Other Method' and held that the approach of the Appellant is not tenable for the following reasons:

a) Price in a quotation cannot be treated as final price as they are subject to negotiations based on quantity, quality, reliability, credit period etc. due to which prices are lower in favour of buyer

b) The appellant has taken a single quotation and used it as the basis of benchmarking. This does not achieve the purpose of arm's length principle that is based on actual price discovery for notional price benchmarking for intra group transfers.

It is submitted that the various data that may be used for comparability purposes under other method, includes third party quotation which represents the price that would have been charged by an independent third-party service provider.

For the purpose of applying 'other method' Rule 10AB of the Rules expressly contemplates adoption of a method which takes into account price that has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, under similar circumstances.

Accordingly, in terms of Rule 10AB benchmarking analysis can be undertaken even on the basis of one comparable. Selection of only one comparable company for the purpose of benchmarking, applying TNMM, was upheld by Mumbai Bench of Tribunal in the case of Petro Araldite Private Limited (ITA No. 6217/ MUM/2012), wherein, it was held as under:

"These provisions make it amply manifest that the attempt should be to first find out a really comparable case and then in the alternative the endeavor should be to find out more than one comparable uncontrolled case, if these are available. There is no warrant in the relevant provisions that one must choose more than one case for benchmarking, even at the cost of comparability."

To the same effect is the decision of the Mumbai Bench of the Tribunal in case of JP Morgan Advisors India Private Limited (ITA 7979/Mum/2010). Therefore, there is no bar under the Act in undertaking benchmarking analysis on the basis of single comparable company. The Appellant has obtained quotation provided by an independent vendor (i.e. NALCO, a ISO 9001:2000, ISO-14001 and OHSAS-18001 certified company having state of the art facility for water treatment, and which is part of a large group with more than 86 years of experience in the IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 domain) for operations and maintenance of the ETP units. It is submitted that the quotation varies as per the capacity of each unit. The said third party quotations were considered by the ETP units for setting up the charge for services in relation to treatment of water provided by them to the other units of the Appellant.

Thus, it is submitted that the appellant has relied on the quotation received from an unrelated third party to determine the arm's length price under the Other Method. In view of the aforesaid, it is respectfully submitted that the adjustment proposed by the Ld. TPO by disregarding the prices, that arise out of the direct communication between unrelated parties and, adopted by the appellant as arm's length price in respect of the same transaction in a controlled environment is unlawful, not sustainable and liable to be deleted. Reliance is placed on the decision of Hon'ble Gujarat High Court in the case of CIT vs Adani Wilmer Ltd [363 ITR 338 (Gujarat) (2014)], wherein the Hon'ble Court upheld that the authentic and reliable quotation could be considered for determination of arm's length price of the transaction under consideration."

10.2 On the other hand, the ld. DR submitted that FAR (Functions, Assets, Risks) analysis for ETP and third-party water suppliers was not undertaken by the appellant, while comparing price of comparable uncontrolled price, for applying Other Method.

Further, he has questioned application of other method under Rule 10AB read with rule 10B.

10.3 The Ld. Counsel of assessee further submitted that a detailed FAR analysis has been made in the TP Study Report. The Ld. TPO, while rejecting the benchmarking undertaken by the assessee, applied 'Other Method' and held that the approach of the Appellant is not tenable only because price in a quotation cannot be treated as final price and a single quotation has been used as the basis of benchmarking. In response to the contention of Ld. DR, the Ld. Counsel for the assessee, inter alia, submitted as below:

> IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 "The Appellant submits that it has complied with the provisions of Rule 10D of the Rules by maintaining the prescribed TP documentation and substantiating the ALP of the specified domestic transactions undertaken by applying the 'Other Method' as the most appropriate method as per provisions of section 92C of the Act. In the TP Study Report, the Appellant has undertaken a detailed economic analysis and demonstrated that the transaction with its AE is at arm's length by benchmarking the transaction of transfer of treated water by ETP basis quotations obtained from third party vendor and said quotations were considered for benchmarking. The quotation varied as per the capacity of each unit.

> Thus, the Appellant has complied with the requirements of the transfer pricing regulations as embodied in the Act and the relevant provisions in the Rules and provided all the relevant documentation needed during the assessment proceedings. It is submitted that the appellant has selected the 'Other method' for the purpose of benchmarking the said transaction and 'Other Method' as per Rule 10AB can be applied in the case of the appellant. As per Rule 10AB of the Rules, the "other method" has been described as follows:
>
> "....the other method for determination of the arms' length price in relation to an international transaction shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts."

Reliance is placed in this regard on the Hon'ble Delhi High Court judgment in the case of Sabic India Private Limited (supra), where the court undertook a detailed analysis of the provisions of Rule 10AB and, held that Rule 10AB of the Rules expressly contemplates adoption of a method which takes into account price that has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, under similar circumstances. The relevant portion of the said judgment reads as below:

> "36. Rule 10AB of the Rules expressly contemplates adoption of a method which takes into account price that has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, under similar circumstances. It is, thus, essential that the transactions which are benchmarked by using the method under Rule 10AB of the Rules are the same or similar transactions."

It is also submitted that as per Section 92C(3) of the Act, the Assessing Officer may proceed to determine the ALP in relation to an international transaction or specified domestic transaction on the basis of material or information or document available with him, if any one of the four conditions are satisfied:

> a) The price charged or paid in an international transaction/SDT has not been determined in accordance with Sections 92C(1) and 92C(2) of the Act:
>
> b) Proper documentation has not been maintained in terms of Section 92D(1) r.w.Rule 10D of the Income Tax Rules, 1962;

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23

c) The information or data used in computation of ALP is not reliable or correct;

d) Failure to furnish any information or document, as required by the AO/TPO during the course of assessment proceedings.

It is observed that the Ld. TPO or the Ld. DR has not substantiated that any of the above four conditions was applicable in this case. The Ld. TPO has also not questioned the genuineness of the quotation but has merely ignored the quotation as in his view price in a quotation cannot be considered for benchmarking analysis and appellant has obtained only a single quotation. The Appellant also emphasizes that the law does not prescribe the number of quotations that should be considered for arm's length price under the other method and hence, the rationale of quotation rejection provided by the Ld. TPO is devoid of any merits. Therefore, the Ld. TPO was not justified in disregarding the TP Study or the benchmarking analysis carried out by the appellant.

It is relevant to note that the text of Rule 10AB does not describe any methodology but only provides an enabling provision to use any method that has been used or may be used to arrive at the price of a transaction undertaken between non-associated enterprises or third parties. In this regard, it is humbly submitted that the Appellant has relied on the quotation received from an unrelated third party to determine the arm's length price under the Other Method.

Considering the above submissions, the various data that may be used for comparability purposes under 'Other Method' includes third party quotations which represent the price that would have been charged by an independent third-party service provider. Further, there are judicial precedents in India wherein use of quotations has been approved by the Hon'ble High Courts and Tribunals for the purposes of determination of arm's length price.

Hence, basis the above, the Appellant submits that the action of the Ld. TPO, in rejecting the quotation obtained by the Appellant from a reputable market player, which is relied on for the purpose of arm's length price determination of transfer of treated water by ETP unit, is not justified. It is submitted that the action of the Ld. TPO in replacing the benchmarking analysis adopted by the appellant with Cost Plus Method is not justified.

In view of the above, it is submitted that the action of the Ld. TPO in rejecting the quotation obtained by the Appellant from a reputable market player and contentions made by the Ld. DR are devoid of merit and deserves to be rejected and the addition made on account of ETP may be deleted."

10.4 We have considered the rival submissions, perused the material available on record and gone through the orders of the revenue authorities and the case law cited by both the parties. We find force in appellant's argument that the Ld. TPO has not IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 questioned the genuineness of the quotation but has merely ignored the quotation as in his view, price in a quotation cannot be considered for benchmarking analysis and assessee has obtained only a single quotation. The ld. Counsel for the assessee has also submitted that the Income-tax Act or Rules do not prescribe the number of quotations that should be considered for arm's length price under the Other Method.

It is relevant to note that Rule 10AB does not describe any methodology but only provides an enabling provision to use any method that has been used or may be used to arrive at the price of a transaction undertaken between non-associated enterprises or third parties.

10.4.1 The Ld. counsel for assessee argued that in terms of Rule 10AB of the Rules, benchmarking analysis can be undertaken even on the basis of one comparable basis and reliance placed on the decision of Hon'ble Mumbai Bench of Tribunal in the case of Petro Araldite Private Limited [ITA No. 6217/ MUM/2012] wherein the hon'ble Tribunal upheld benchmarking analysis basis selection of only one comparable.

Further, the Ld. counsel for the assessee relied on various decisions of the Hon'ble High Courts and Tribunals, including the decisions of CIT vs Adani Wilmer Ltd [363 ITR 338 (Guj) (2014), Toll Global Forwarding India Pvt. Ltd. vs. DCIT, 37 ITR Trib 391 (Delhi), DCIT vs Nobel Resources and Trading India Private Limited [70 Taxmann.com 300 IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 (2016) (Delhi)] etc., wherein use of quotations were approved for the purposes of determination of arm's length price.

10.4.2 We find that the Hon'ble Gujarat High Court, in case of CIT vs Adani Wilmer Ltd [363 ITR 338 (Guj) (2014), upheld that the authentic and reliable quotation could be considered for determination of arm's length price of the transaction under consideration. The relevant extract of the ruling is reproduced below:

> "7. In terms of clause (c) of sub-section (3) of Rule 10D of the Rules, these price publications as long as the same were authentic and reliable, would be relevant materials. In this background, mere base of the organization would be of no consequence. Further, though the price quotations of the MPOB would be entitled to its due and full weightage and respect, would not necessarily mean that the other quotations would lose their significance, unless, of course, it is pointed out that such quotations lack basis."

10.4.3 The Coordinate Bench of the Delhi Tribunal in case of Toll Global Forwarding India Pvt. Ltd. vs. DCIT (supra) while dealing with the similar matter, has held as under :-

> " 25. In effect, thus, it would appear that as long as one can come to the conclusion, under any method of determining the arm's length price, that price paid for the controlled transactions is the same as it would have been, under similar circumstances and considering all the relevant factors, for an uncontrolled transaction, the price so paid can be said to be arm's length price. As we have noted earlier in this order, the price need not be in terms of an amount but can also be in terms of a formulae, including interest rate, for computing the amount. In any case, when the expression "price which .....would have been charged or paid" is used in rule 10BA, dealing with this method, in this method the place of "price charged or paid", as is used in rule 10B(1)(a), dealing with CUP method, such an expression not only covers the actual price but also the price as would have been, hypothetically speaking; paid if the same transaction was entered into with an independent enterprise. This hypothetical price may not only cover bona fide quotations, but it also takes it beyond any doubt or controversy that where pricing mechanism for associated enterprise and independent enterprise is the same, the price charged to

> the associated enterprises will be treated as an arm's length price. In this IT(TP)A 1/JODH/2025 Assessment Year - 2022-23 view of the matter, the business model said to have been adopted by the assessee, in principle, meets the test of arm's length price determination under rule 10BA as well."

The above decision of the Delhi Tribunal has been upheld by the Hon'ble Delhi High Court in PCIT vs. Toll Global Forwarding India Pvt. Ltd. 381 ITR 38 (Del-HC)].

10.4.4 We also find that similar findings have been upheld by the coordinate bench of the ITAT, Jaipur in case of DCIT vs Shree Cement Limited in ITA no.

142/JP/2023 relying on the decision of PCIT vs Toll Global Forwarding India Pvt Ltd (supra). The relevant extract of the said decision is reproduced here below:

> "38. .....We find that the Coordinate Bench of the Tribunal Delhi in case of Toll Global Forwarding India Pvt. Ltd. vs. DCIT, 37 ITR_Trib 391 (Delhi) while dealing with the matter, has held as under :- "

25. In effect, thus, it would appear that as long as one can come to the conclusion, under any method of determining the arm's length price, that price paid for the controlled transactions is the same as it would have been, under similar circumstances and considering all the relevant factors, for an uncontrolled transaction, the price so paid can be said to be arm's length price. As we have noted earlier in this order, the price need not be in terms of an amount but can also be in terms of a formulae, including interest rate, for computing the amount. In any case, when the expression "price which .....would have been charged or paid" is used in rule 10BA, dealing with this method, in this method the place of "price charged or paid", as is used in rule 10B(1)(a), dealing with CUP method, such an expression not only covers the actual price but also the price as would have been, hypothetically speaking; paid if the same transaction was entered into with an independent enterprise. This hypothetical price may not only cover bona fide quotations, but it also takes it beyond any doubt or controversy that where pricing mechanism for associated enterprise and independent enterprise is the same, the price charged to the associated enterprises will be treated as an arm's length price. In this view of the matter, the business model said to have been adopted by the assessee, in principle, meets the test of arm's length price determination under rule 10BA as well."

The above decision of the Delhi Tribunal has since been upheld by the Hon'ble Delhi High Court in PCIT vs. Toll Global Forwarding India Pvt. Ltd. 381 ITR 38 (Del-HC)]. Similar view has also taken in ACIT vs. Adani Wilmar Ltd., 64 SOT 0122 (Ahd - Trib.) as affirmed by Hon'ble Gujarat High Court in CIT vs. Adani Wilmar Ltd., 363 ITR 0338 (Guj-HC).

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23

39. We, therefore, considering the detailed findings of the ld. CIT (A) along with the judicial precedents of the Hon'ble Supreme Court, Hon'ble High Courts and the various benches of the

Tribunal, find no infirmity in the order of the ld. CIT (A), accordingly the order of the ld. CIT (A) is upheld. The ground of the Revenue is dismissed."

10.4.5 The Hon'ble Delhi High Court in the case of DCIT vs Nobel Resources and Trading India Private Limited (supra), while relying on the Gujarat High Court decision in Adani Wilmar Ltd (supra) held that:

> "16. Therefore respectfully following the decision of Hon'ble Gujarat High Court and drawing support from OECD BEPS Action Plan, we are of the view that even the 'quoted prices' which is authentic may be acceptable as per Rule 10D(3) of the Income Tax Rules for comparability analysis."

10.4.6 Respectfully following the judicial precedents of the Hon'ble High Courts and various benches of the Tribunals, we hold that the assessee's contention to the effect that the arm's length price computed on the basis of the quotation obtained from third party vendor are valid and accordingly, the impugned adjustment of Rs 24,21,59,598 is deleted. Thus, this ground of the Assessee is allowed.

11. Ground No. 7 and 7.1 are related to disallowance of MAT Credit amounting to Rs. 131,57,69,489/-

11.1 This ground is not pressed by the ld. counsel of the assessee as pursuant to the rectification application u/s 154 filed by the appellant, the AO allowed the MAT credit while computing the tax demand vide the Rectification Order dated 07.01.2026.

Accordingly, this ground is dismissed as not pressed.

IT(TP)A 1/JODH/2025 Assessment Year - 2022-23

12. Ground No. 8 is related to the fact that the AO/NFAC erred in facts and in law in incorrectly levying interest under Section 234B of the Act.

12.1 The issue related to the levy of interest u/s 234B of the Act is not pressed by the ld. counsel of assessee as pursuant to the rectification application u/s 154 filed by the appellant, the AO rectified the interest u/s 234B while computing the tax demand vide the Rectification Order dated 07.01.2026. Thus, the issue of interest u/s 234B of the Act is dismissed as not pressed.

13. The last Ground No. 9 is related to initiating penalty proceedings under Section 270A r.w.s. 274 of the Act for the alleged under-reporting of income.

13.1 The ld. Counsel for the assessee has not pressed this ground. Therefore, this ground is dismissed as not pressed.

14. In the result, the appeal is partly allowed.

Order pronounced in the open court on 03/06/2026.

Sd/-	Sd/-
(SUDHIR PAREEK)	(DR. MITHA LAL MEENA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated : 03/06/2026.
Nimisha Sr. PS

IT(TP)A 1/JODH/2025
Assessment Year - 2022-23

True Copy

Copies to:
(1) The appellant.
(2) The respondent.
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

BY ORDER,