आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Amitabh Shukla, Accountant Member

आयकर अपील सं./**I.T.A. Nos.686, 687 & 688/Chny/2023**
निर्धारण वर्ष/Assessment Years: 2015-16, 2017-18 & 2018-19

The Income Tax Officer, Corporate Ward 6(1), Chennai 600 034.	Vs.	SJLT Textiles, 2E, 2nd Floor, Prince Arcade Cathedral Road, Chennai 600 086. **[PAN: AAICS2028M]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri AR. V. Sreenivasan, Addl. CIT
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Sandhyaarthi, C.A.
सुनवाई की तारीख/ Date of hearing	:	06.05.2024
घोषणा की तारीख /Date of Pronouncement	:	17.05.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

All the above three appeals are filed by the Revenue against separate orders dated 30.03.2023 and 31.03.2023 passed by the ld. CIT(A), NFAC, Delhi for the assessment years 2015-16 and 2017-18 & 2018-19 respectively.

2. Since issues raised in these three appeals are similar, basing on the same identical facts, with the consent of both the parties, we proceed to hear the appeals together and pass consolidated order for the sake of convenience.

3. **Firstly, we shall take up appeal in ITA No. 686/Chny/2023 AY 2015-16.**

4. Ground Nos. 1 to 3 raised by the Revenue is general in nature and requires no adjudication.

5. Ground Nos. 4 & 5 raised by the Revenue challenging action of ld. CIT(A) in allowing the claim of the assessee under section 80IA of the Income Tax Act, 1961 ["Act" in short] to an extent of ₹.3,40,61,684/- as against ₹.1,33,92,247/- restricted by the Assessing Officer in the given facts and circumstances of the case.

6. Brief facts of the case are that the assessee is a company, engaged in the business of manufacturing of cotton yarn and fabrics. The assessee generated power from Wind Mills, which was captively consumed by the assessee. The assessee claimed profit from the said windmills as deduction under section 80IA of the Act to the extent of ₹.3,40,61,684/-. In the scrutiny proceedings, the Assessing Officer opined that the assessee could not have claimed the benefit at the rate chargeable by the distribution companies but should have claimed on the basis of rates fixed by Tariff Regulatory Commission for sale of electricity by generating companies. Accordingly, a show-cause notice was issued to the assessee as to why the rate fixed by Tariff Regulatory Commission

should not be applied The assessee relied on various judicial precedents and supported in adopting the average price of the power purchased other than the captive power. The Assessing Officer found the same as not acceptable and proceeded to restrict the said deduction by following price fixed by Tariff Regulatory Commission of Tamil Nadu at ₹.2.75 per unit as against ₹5.60 per unit as adopted by the assessee.

7. Aggrieved by the assessment order, the assessee preferred an appeal before the ld. CIT(A). The ld. CIT(A) discussed the issue in detail, by placing reliance in the cases of Shree Cement Ltd. of Jaipur ITAT Bench, Sri Velayudhaswamy Spinning Mills (P) Ltd. [2012] 19 taxmann.com 28 (Chennai), Sri Matha Spinning Mills (P) Ltd. [2013] 31 taxmann.com 13, Eveready Spinning Mills (P) Ltd. [2012] 17 taxmann.com 254 and in the case of M/s. Saranya Textiles in ITA No. 1294/Chny/2019, allowed the claim of the assessee by holding that the rate on which State Electricity Board or the generation/distribution companies sell power to industrial and consumers should be adopted as the open market value so as to determine the market value of the electricity transferred.

8. As aggrieved by the order of the ld. CIT(A), the Revenue is in appeal before us by raising the above mentioned ground.

9. The ld. DR Shri AR V Sreenivasan, Addl. CIT submits that while computing the profits of the undertaking generating power for captive consumption, the assessee has adopted the selling price charged by the Tamil Nadu Electricity Board, which is incorrect as the relevant factor is realizable value that the assessee may derive from the power generated by it. If the assessee were to sell the power generated by it in the open market, it has to necessarily incur transmission losses and also the cost related to the infrastructure for the distribution of electricity by laying out cables. He argued that the profit that can be realized from the open market in respect of energy generated by it will be much lesser than the value that is charged by the State Electricity Board which is supplying electricity to the assessee as the State Electricity Board takes into account the transmission losses and the cost of distribution in the selling price.

10. Secondly, he submits that "*the market value of power generated by the assessee is to be determined by taking into account the revenue and profits that can be made by an entity which generates the same units of electricity as the present assessee and sells in the open market. Such an entity will have to bear transmission loss and costs of distribution if it wants to sell directly to consumers"*. He argued that the profits made by such an entity will be

much less than the profits computed by the assessee. Further, he vehemently put up that the assessee has artificially increased the profit from these undertakings which is eligible for deduction under section 80IA of the Act. Since the ld. CIT(A) failed to consider all these aspects, the ld. DR prayed to quash the order of the ld. CIT(A). Further, he vehemently supported the order of the Assessing Officer by submitting that adoption of market value as sale price also goes against the principle that *"no one can make a profit out of himself"* as market price includes profit element.

11. The ld. AR Ms. Sandhyaarthi, C.A. submits for the purpose of computing deduction under section 80IA of the Act, the assessee has determined gross receipts by adopting an average price of ₹.5 to 6 per unit based on the power purchased from the open market. Further she submits the assessee purchases power from the private power producers and Tamilnadu Electricity Board on need base and adopted the average rate at which power is purchased from the private power producers for arriving at the market rate of the power generated from windmills. She argued that the price at which Tamilnadu Electricity Board/private power producers sell electricity to industrial consumers is representative of the price of electricity would ordinarily fetch in the open market, i.e., the price which has been adopted by respondent for the electricity generated by

eligible business used for captive consumption for the purpose of computing profits and gains of the eligible business under section 80IA of the Act. She drew our attention to the assessment order and submits that the Assessing Officer observed that the benefit under section 80IA of the Act has to be worked out by taking market value as the rate at which electricity could have been sold to distribution licensee by a generating company. Primarily, placing reliance in the case of CIT v. ITC Ltd. [2015] 64 taxmann.com 214] of Hon'ble High Court of Calcutta, she argued that the view taken by the Hon'ble High Court of Calcutta in the above case as the electricity could be sold by a captive power plant either to a distribution company or the company engaged in both generation and distribution of electricity, but not in open market because of prohibition in earlier Electricity Act. The said view is not application to the year under consideration due to operation of new Electricity Act, 2003. She also brought to our notice that SLP was adopted by the Hon'ble Supreme Court against the decision in the case of ITC Ltd. (supra). She placed reliance of various case law and drew our attention to pages 15 to 188 of the paper book and prayed to dismiss the ground of appeal raised by the Revenue.

12. Heard both the parties and perused the materials available on record. We note that the assessee utilized the power produced by its

windmills for its own consumption. The assessee produced 78,10,153 units by its windmills. The market value as adopted by the assessee for the purpose of computing deduction under section 80IA of the Act at the average rate of ₹.5.60 per unit which was arrived on the total charges paid by the assessee towards electricity purchased from Tamilnadu Electricity Board and other private power producers. According to the Assessing Officer, the average rate adopted by the assessee at ₹.5.60 per unit is not market value and was of the opinion, that the tariff fixed by Tamilnadu Electricity Board for procurement of power generated from windmills can alone be taken as market value. Accordingly, the Assessing Officer fixed the rate at ₹.2.75 per unit as against ₹.5.60 per unit as adopted by the assessee. We note that the assessee made claim of ₹.3,40,61,684/- [78,10,153 units x ₹.5.60 per unit] and the Assessing Officer restricted the same to an extent of ₹.1,33,92,247/- [78,10,153 units x ₹.2.75 per unit]. Therefore, we have to decide as to which price as adopted by the assessee or the Assessing Officer really represent the market price. With regard to market price of electricity, the Assessing Officer placed reliance in the case of CIT v. ITC Limited (supra) of Hon'ble High Court of Calcutta. The ld. AR supported the findings of the ld. CIT(A) in holding that the said decision is not applicable to the case on hand as it is prior to coming into existence of new Electricity Act, 2003.

We note that the ld. CIT(A) discussed the same in page No. 14 of the impugned order and was of the opinion that the said decision was rendered while interpreting Income Tax Act as well as the regulation surrounding sale of electricity as they stood before 2003. Further, after 2003, the law relating to generation and sale of electricity have undergone significant amendment, whereby, it is noted that until 2003, the price of electricity was controlled and there was free market price in view of the Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948.

12. Coming to the present case, after coming into existence of new Electricity Act, 2003, the issue in this regard about determining the market value is settled. The ld. CIT(A), in his order, referred to the decision of Hon'ble High Court of Chhattisgarh and Gujarat in the case of CIT v. Godawari Power & Ispat Ltd. [2014] 42 taxmann.com 551] and PCIT v. Gujarat Alkalies & Chemicals Limited [2017] 88 taxmann.com 722] respectively. Further, he also referred to the decision of the Hon'ble High Court of Bombay in the case of CIT v. Reliance Industries Ltd. [2020] 421 ITR 686 and held that the rate at which the state electricity board or power generation and distribution companies sell power to industrial and consumers should be adopted as open market value so as to determine the market value of electricity transferred.

13. The ld. AR placed on record the recent decision of the Hon'ble Supreme Court in the case of CIT v. Jindal Steel & Power Limited in Civil appeal No. 13771 of 2015 dated 06.12.2023. The relevant portion of the above judgement from para 25 to 31 are reproduced herein below:

> *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.*
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> *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 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 Board 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.

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

the market value as is understood for the purpose of Section 80IA (8). On the contrary, the rate at which State Electricity Board supplied electricity to the industrial consumers would have to be taken as the market value for computing deduction under Section 80 IA of the Act.

30. Thus on a careful consideration, we are of the view that the market value of the power supplied by the State Electricity Board to the industrial consumers should be construed to be the market value of electricity. It should not be compared with the rate of power sold to or supplied to the State Electricity Board since the rate of power to a supplier cannot be the market rate of power sold to a consumer in the open market. The State Electricity Board's rate when it supplies power to the consumers have to be taken as the market value for computing the deduction under Section 80-IA of the Act.

31. That being the position, we hold that the Tribunal had rightly computed the market value of electricity supplied by the captive power plants of the assessee to its industrial units after comparing it with the rate of power available in the open market i.e., the price charged by the State Electricity Board while supplying electricity to the industrial consumers. Therefore, the High Court was fully justified in deciding the appeal against the revenue.

14. On careful reading of the above, we note that the Hon'ble Supreme Court held the expression "market value" in relation to any goods as defined by the explanation below to proviso to sub-section (8) of section 80IA of the Act, meaning the price of such goods determined in an environment of free trade or competition, is market value which 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.

15. Further, the Hon'ble Supreme Court held that the market value of the power supplied by the assessee to its industrial units should be computed by considering the rate at which the State Electricity Board

supplied power to the consumers in the open market, but not comparing it with the rate of power when sold to a supplier i.e., sold by the assessee to the State Electricity Board. Thus, it is clear that the rate at which power was supplied to a supplier could not be a market rate of electricity purchased by a consumer in the open market, but, the rate at which the State Electricity Board supplied power to the industrial consumers is to be taken as market value. Further, the ld. AR brought to our notice that the Assessing Officer allowed the deduction under section 80IA of the Act for the initial year being assessment year 2011-12. Further, for the assessment year 2020-21, the Assessing Officer allowed deduction under section 80IA of the Act in favour of the assessee. We note that the Revenue allowed the claim of the assessee for computing deduction under section 80IA of the Act for initial year and the assessment year subsequent to the year under consideration.

16. In the present case as discussed above, the assessee adopted price at ₹.5.60 per unit which was arrived at on the total charges paid by the assessee towards electricity purchased from Tamilnadu Electricity Board and other price power purchaser. We find that the facts and circumstances of the present case are similar and identical to the facts and circumstances before the Hon’ble Supreme Court in the case of CIT

v. M/s. Jindal Steel & Power Limited (supra) and the ratio laid down by the Hon'ble Supreme Court is applicable to the facts on hand. Therefore, we hold that the rate at which State Electricity Board supplied electricity to the industrial consumers would have to be taken as the market value for computing deduction under section 80IA of the Act. By respectfully following the decision of the Hon'ble Supreme Court in the case of CIT v. M/s. Jindal Steel & Power Ltd. (supra), the claim of the assessee is allowed. The order of the ld. CIT(A) is justified and the grounds raised by the Revenue are dismissed.

17. Now we shall take up appeal in ITA No. 687/Chny/2023 for AY 2017-18:

18. Ground Nos. 1 to 3 raised by the Revenue is general in nature and requires no adjudication.

19. Grounds No. 4 & 5 raised by the Revenue are similar to the grounds No. 4 & 5 in I.T.A. No. 686/Chny/2023 for assessment year 2015-16, wherein, we took a view that the rate at which State Electricity Board supplied electricity to the industrial consumers would have to be taken as market value for computing deduction under section 80IA of the

Act and the same is equally applicable to ground Nos. 4 & 5 of this appeal. Thus, the grounds raised by the Revenue are dismissed.

20. ITA No. 688/Chny/2023 for AY 2018-19:

21. Ground Nos. 1 to 3 raised by the Revenue is general in nature and requires no adjudication.

22. Grounds No. 4 & 5 raised by the Revenue are similar to the grounds No. 4 & 5 in I.T.A. No. 686/Chny/2023 for assessment year 2015-16, wherein, we took a view that the rate at which State Electricity Board supplied electricity to the industrial consumers would have to be taken as market value for computing deduction under section 80IA of the Act and the same is equally applicable to ground Nos. 4 & 5 of this appeal. Thus, the grounds raised by the Revenue are dismissed.

23. In the result, all the three appeals filed by the Revenue are dismissed.

Order pronounced on 17th May, 2024 at Chennai.

Sd/-	Sd/-
(AMITABH SHUKLA)	(S.S. VISWANETHRA RAVI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 17.05.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2.प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT,
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.