

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.8 OF 2016

Dated: 30.04.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

DELHI TRANSCO LIMITED

Shakti Sadan, Kotla Road
New Delhi – 110 002

... Appellant

Versus

01. DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, C-Block,
Shivalik, Malviya Nagar,
New Delhi – 110 017

02. BSES RAJDHANI POWER LIMITED

BSES Bhavan, Nehru Place,
New Delhi – 110 019

03. BSES YAMUNA POWER LIMITED

Shakti Kiran Building,
Karkardooma,
Delhi – 110 092

04. Tata Power - Delhi Distribution Limited

Grid Sub Station Building
Hudson Lines, Kingsway Camp,

Delhi 110 009

05. NEW DELHI MUNICIPAL COUNCIL

Palika Kendra, Parliament Street
New Delhi 110001

06. MILITARY ENGINEERS SERVICES

Ministry of Defence,
Government of India,
New Delhi

... Respondents

Counsel on record for the Appellant(s) : Pradeep Misra
Manoj Kumar Sharma

Counsel on record for the Respondent(s) : Dhananjay Baijal for Res.1

Ashutosh Kumar Srivastava
Akshat Jain
Rahul Kinra
Amit Kapur
Anupam Varma for Res.4

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant, Delhi Transco Limited, has, in this appeal, assailed certain findings of the 1st respondent Delhi Electricity Regulatory Commission (hereinafter referred to as “the Commission”) in tariff order dated 29.09.2015 passed in petition no.17/2015 filed by the appellant seeking true up of its financials for the Financial Year (FY) 2012-13 and FY 2013-15 and approval

of Annual Revenue Requirement (ARR) as well as determination of Transmission Tariff for FY 2015-16.

2. The appellant is a company incorporated under the provisions of Companies Act, 1956 and wholly owned undertaking of the Government of National Capital Territory (NCT) of Delhi. Since 01.04.2007, it has been discharging the functions of transmission of electricity in the NCT of Delhi. Initially, the appellant was vested with the functions of transmission as well as bulk supply of electricity pursuant to the unbundling of erstwhile Delhi Vidyut Board (DVB) under the provisions of Delhi Electricity Reforms Act, 2000 and the Statutory Transfer Scheme notified by the Government of NCT of Delhi under the said Act. Prior to 01.04.2007, the appellant was also undertaking the functions of bulk purchase of electricity from the generating stations and bulk sale of electricity to the 2nd respondent BSES Rajdhani Power Limited.

3. The following issues were raised in this appeal by the appellant vis-à-vis the impugned tariff order dated 29.09.2015: -

- (A) Non-truing up of capitalization for the year 2011-12.
- (B) Debt and equity consideration for FY 2010-11.
- (C) Working capital consideration.
- (D) Mistake in calculation of Regulated Rate Base (RRB).

- (E) True up for the years 2012-13 and 2013-14: -
- (i) Pension trust dues not fully allowed.
 - (ii) Certain portion of administrative and general expenses disallowed.
 - (iii) Incorrect figure taken by the Commission for allowing return on capital employed.
 - (iv) Disallowance of income tax for the years 2012-13 and 2013-14.
 - (v) Consideration of Rs.11.71 crores as non-tariff income of the appellants for the year 2012-13.
 - (vi) Arithmetical mistake in ARR for the year 2012-13.
- (F) Annual Revenue Requirements (ARR) for the FY 2015-16: -
- (i) Non-consideration of escalation in expenses for new asset addition.
 - (ii) Error in calculation of income tax on Regulated Rate Base instead of the equity as per tariff regulations.
 - (iii) Disallowance of Carrying Cost for the DVB arrears for the year 2014-15.

4. We have heard learned counsel for the appellant as well as learned counsels appearing for respondent Nos.1, 2, 3 & 4. We have also perused the impugned order and the written submissions filed by the learned counsels.

5. Our issue wise analysis is as under: -

Issue No.(A): Non-truing up of capitalization for the year 2011-12.

6. During the course of hearing on 12.08.2024 on this issue, learned counsel for the Commission submitted that truing up order after capitalization has been passed on 19.07.2024. Accordingly, we observed in the order dated 12.08.2024 as under: -

*"During the course of hearing, the issue No. I truing up of non capitalization for the year 2011-12, it has been submitted by Mr. Dhananjay Baijal, Learned Counsel for DERC that truing up order after capitalization has been passed on 19th July, 2024. **Considering that the issue has been taken up and decided by Delhi Electricity Regulation Commission, the Appellant is granted liberty to examine the same order and in case, feel aggrieved, will file a separate appeal challenging the latest order. The issue No. I stands closed.**"*

7. Thus, this issue stands already closed.

Issue No.(B): Debt and equity consideration for FY 2010-11.

8. The impugned findings of the Commission in this regard, as contained in table 3.4 are extracted hereinbelow: -

“Table 3.4: RoCE approved for FY 2007-08 to FY 2011-12 (Rs. Crore)

Sl. No	Particulars	FY 2007-08	FY 2008-09	FY 2009-10	FY- 2010-11	FY 2011-12	Remarks
A	RRB Opening	624.29	629.94	714.38	799.11	1371.10	
B	Original Costs of Fixed Assets	923.54	962.89	1082.03	1200.68	1822.21	Table 3.1
C	Accumulated Depreciation	299.25	333.21	370.01	411.10	465.52	
D	Additional Capitalisation	39.35	119.14	118.65	621.53	483.91	Table 3.1
E	Closing GFA	962.89	1082.03	1200.68	1822.21	2306.12	B+D
F	Average GFA	943.22	1022.46	1141.36	1511.45	2064.17	(B+E)/2
G	Rate of Depreciation	3.60%	3.60%	3.60%	3.60%	3.60%	MYT Regulation
H	Depreciation	33.96	36.81	41.09	54.41	74.31	F*G
I	Change in Working Capital	0.26	2.36	9.53	14.41	16.66	
J	RRB Closing	629.94	714.38	799.11	1371.10	1782.95	A+J+D-H
K	RRB(i)	627.25	673.47	762.69	1097.08	1592.56	A+J+(D-H)/2
L	Equity (Opening)	180.00	191.80	227.54	263.14	449.60	
M	Equity (Addition)	11.81	35.74	35.60	186.46	145.17	D*30%
N	Equity (Closing)	191.81	227.55	263.14	449.60	594.77	L+M
O	Equity (Average)	185.90	209.68	245.34	356.37	522.19	(L+N)/2
P	Debt (Opening)	532.48	560.03	643.42	726.48	1161.55	
Q	Debt addition	27.55	83.40	83.06	435.07	338.74	D*70%
R	Debt (Closing)	560.03	643.42	726.48	1161.55	1500.29	P+Q
S	Debt (Average)	546.25	601.72	684.95	944.01	1330.92	(P+R)/2
T	Rate of Return on Equity	14%	14%	14%	14%	14%	MYT Regulation

U	Rate of Return on Debt	11.50%	11.50%	9.92%	10.50%	11.50%	
V	Weighted Average Cost of Capital (WACC)	12.13%	12.15%	11.00%	11.46%	12.20%	$(O/(O+S)*T) + (S/(O+S)*U)$
W	Return on Capital Employed	76.12	81.80	83.87	125.72	194.36	$K*W$
X	Earlier Approved RoCE	84.66	90.03	87.66	128.99	198.55	T.O 31.07.2013
Y	Difference	-8.54	-8.23	-3.79	-3.27	-4.19	W-X

S-Tariff order dated 31.07.2013

”

9. The grievance of the appellant is that the State Commission has failed to consider the debt-to-equity ratio for FY 2010-11 correctly and the same is in contradiction to the previous approvals granted by it. It is submitted that the Commission has erred in not considering the conversion of Rs.239 crores of debt into equity by the Government of NCT of Delhi and further infusion of Rs.80 crores by the holding company in the total capital employed for the year 2010-11. According to the appellant, it appears to be a mistake as the correct figures were duly considered by the Commission in previous order dated 31.07.2013 as reflected in table No.26 contained in the said order which is reproduced hereinbelow: -

“Table 26: Return on Capital Employed approved by the Commission (Rs. Crore)

Particulars		FY 2006-07 (Base Year)	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
A	RRB	0.00	697.71	741.26	798.49	1093.05	1582.44
B	Amount Capitalised	95.67	47.44	103.54	65.00	584.74	483.91

	During the Year						
$C_n = C_{n-1} + (B_n^* \text{ 30\%})$	Equity (Closing)	180.00	194.23	225.29	239.72	697.80	839.17
	Equity (Average)	0.00	187.12	209.76	232.51	468.76	768.49
$D_n = D_{n-1} + (B_n^* \text{ 70\%})$	Debt (Closing)	532.48	565.69	638.16	688.73	895.39	1237.92
	Debt (Average)		549.08	601.92	663.45	792.06	1066.66
E	Rate of Return on Equity		14%	14%	14%	14%	14%
F	Rate of Return on Debt		11.50%	11.50%	9.92%	10.50%	11.50%
G=	WACC		12.14%	12.15%	10.98%	11.80%	12.55%

”

10. On behalf of the respondents, it is contended that even the additional capitalization for the FY 2010-11 has necessarily to be considered in the ratio of 70:30 as envisaged by Regulation 5.13 of Transmission Tariff Regulations, 2011, the relevant portion of which is quoted hereinbelow: -

*“..debt-equity ratio as on the Date of Commercial Operation in case of new Transmission lines or substation or capacity expanded shall be 70:30. **Where equity employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as notional loan.**”*

11. It is argued on behalf of the respondents that appellant, in fact, wishes to have its equity inflated, which can not be permitted in view of the said regulation.

Our Analysis: -

12. From the perusal of table 26 contained in Commission's order dated 31.07.2013 (passed in petition of the appellant for true up for FY 2007-08 to FY 2011-12 and revised ARR for FY 2013-14), it is clear that the Commission had duly considered conversion of loan of the Government of NCT of Delhi in the sum of Rs.239 crores into equity as well as Rs.80 crores as equity infusion by the Delhi Power Company Limited. Upon doing so, the capitalization amount for the FY 2010-11 was considered as Rs.584.74 crores and equity opening as Rs.239.72 crores. Accordingly, an amount of Rs.697.80 has been approved as equity in the said order upon considering the amount of Rs.239.72 crores received from Government of NCT of Delhi and Delhi Power Company Limited into equity of the appellant.

13. It is argued on behalf of the Commission that the order dated 31.07.2013 was provisional for the FY 2010-11 and the impugned order is the true up for the same. It is submitted that in the order dated 31.07.2013, the Commission has neither put forth any methodology nor has given any reasons

for considering equity that breaches the mandate of 70:30. It is further submitted that the figures considered in order dated 31.07.2013 can be termed as erroneous and the impugned order correction thereof as per the extent regulations.

14. In this regard, we note that in the impugned order, the Commission has clarified that while computation of RRB from FY 2007-08 to FY 2010-11, the closing balance of Original Cost of Fixed Assets (OCFA) for FY 2006-07 have been considered erroneously as opening balance of OCFA in the said FY 2006-07 in tariff order dated 20.12.2007, which error has been rectified by revision of RRB and ROCE for FY 2007-08 to FY 2011-12 as given in table No.3.4, which has been reproduced hereinabove.

15. Be that as it may, the fact remains that the Commission has in the impugned order neither considered the conversion of Rs.39 crores of debt by the Government of NCT of Delhi into equity as well as further infusion of equity for Rs.80 crores by the holding company Delhi Power Company Limited, as done in the order dated 31.07.2013, nor has given any reason for non-consideration of the same. Further, the Commission has nowhere stated as to how the said debt by the Government of NCT of Delhi as well as the infusion of equity by Delhi Power Company Limited has been treated or is to be

treated. The Commission has maintained an eerie silence on this aspect in the impugned order.

16. Therefore, we are unable to sustain the findings of the Commission on this issue. The same are hereby set aside. The issue is remanded back to the Commission for fresh consideration in the light of above observations.

Issue No.(C): Working capital consideration.

17. This issue was not pressed on behalf of the appellant as the same has already been resolved by the Commission vide subsequent tariff order dated 31.08.2017.

Issue No.(D): Mistake in calculation of Regulated Rate Base (RRB).

18. This issue also was not pressed on behalf of the appellant as the same has already been resolved by the Commission vide subsequent tariff order dated 31.08.2017.

Issue No.(E)(i): Pension trust dues not fully allowed.

19. According to the appellant, the Commission has erred in not granting it additional amounts towards servicing of the pension of erstwhile DVB employees. It is submitted on behalf of the appellant that the contributions

made to the pension trust were as per the requirements notified by the government of NCT of Delhi and the Commission has failed to cite in imprudence on the part of the appellants in making such contributions.

20. On behalf of the Commission, it is submitted that the same issue was involved before this Tribunal in appeal No.281/2015 also in which it was recorded by this Tribunal on 29.01.2024 as under: -

“Mr. Amit Kapur, Learned Counsel appearing on behalf of the Appellant has informed that similar matters under the W.P.(C) No. 1698 of 2010 titled 'DSEWU Vs. GONCTD & Ors' and W.P.(C) No. 4311 of 2013 titled 'Saurabh Suden & Anr. Vs. DVB & Ors' filed before the High Court of Delhi are pending for final decision which may have an impact on these Appeals.”

21. It is further pointed out that this Tribunal has in the order dated 30.05.2024 passed in the said appeal No.281/2015 observed as under: -

“Learned Counsels for the parties submitted that the matter is pending before the High Court of Delhi which is scheduled to be listed for hearing in the month of September, 2024 Let the matter be heard in this

Tribunal only after the decision is pronounced before the High Court of Delhi.”

22. It is submitted on behalf of the Commission that since the issue involved in this appeal is similar to the issue involved in appeal no.281/2015 and regarding which the proceedings are also pending before the Hon’ble Delhi High Court, the decision on the instant issue may be deferred till after the decision of the High Court in the Writ Petition (C) Nos.1698/2021 and 4311/2013.

23. In view of these submissions made on behalf of the Commission, which have not been refuted on behalf of the appellant, we find it in the interest of justice to defer decision on the present issue in order to avoid conflicting orders. Therefore, the issue is kept pending for the time being and shall be heard after any decision is pronounced by the Delhi High Court in the above noted two writ petitions.

Issue No.(E)(ii): Certain portion of administrative and general expenses disallowed.

24. The Commission, in the impugned order, has disallowed an amount of Rs.31.37 crores to the appellant for FY 2013-14 for the reason that the

appellant had not hedged the foreign currency loan and an amount of Rs.1.92 crores of Dividend Distribution Tax (DDT) which has actually been paid by the appellant in the year 2012-13, on the ground that regulations only provide for tax on Return on Equity (RoE).

25. It is submitted on behalf of the appellant that in the present case, the foreign currency loss has arisen on account of the foreign currency transactions on which there arises no question of hedging. It is submitted that hedging against the foreign currency fluctuations on the transactions being executed by the appellants is practically not possible for the reason that the time of discharging the liability for foreign currency is not ascertainable in advance due to many uncontrollable events/exigencies.

Our Analysis: -

26. Regulations 10.2 to 10.5 of MYT Regulations, 2011 relate to Foreign Exchange Rate Variations (FERV) and provide as under:-

"Foreign Exchange Rate Variation

10.2 The Transmission Licensee may hedge foreign exchange exposure in respect of the interest on foreign currency loan and repayment of foreign loan acquired

for the transmission system in part or full in the discretion of the Transmission Licensee.

10.3 The Transmission Licensee shall recover the cost of hedging of foreign exchange rate variation corresponding to the normative foreign debt, in the relevant year on year-to-year basis as expense in the period in which it arises and extra rupee liability corresponding to such foreign exchange rate variation shall not be allowed against the hedged foreign debt.

10.4 To the extent the Transmission Licensee is not able to hedge the foreign exchange exposure, the extra rupee liability towards interest payment and loan repayment corresponding to the normative foreign currency loan in the relevant year shall be permissible provided it is not attributable to the Transmission Licensee or its suppliers or contractors.

10.5 The Transmission Licensee shall recover the cost of hedging and foreign exchange rate variation on year-to-year basis as income or expense in the period in which it arises."

27. As per regulation 10.2, a transmission licensee is permitted to hedge foreign exchange exposure in respect of the interest on foreign currency loan

and repayment thereof in part or full and regulation 10.3 entitles the transmission licensee to recover cost of such hedging corresponding to the normative foreign debt in the relevant year on year-to-year basis as expense in the concerned period.

28. Regulation 10.4 assumes importance regarding the case at hand and provides that if the transmission licensee is not able to hedge the foreign exchange exposure, the extra expenditure incurred towards interest payment and loan repayment corresponding to the normative foreign currency loan in the relevant year shall be permissible provided that such expenditure is not attributable to the transmission licensee or its suppliers or contractors.

29. It is, therefore, clear that these regulations do not make it obligatory for a transmission licensee to hedge foreign exchange exposure. The transmission licensee may or may not do so in its discretion. In case, the transmission licensee is unable to hedge the foreign exchange exposure, its claim with regard to the foreign exchange loss cannot be rejected straightaway merely for not hedging the foreign exchange exposure. The claim has to be considered by the Commission and allowed if the Commission is satisfied that the extra expenditure towards interest payment of such loan as well as loan repayment is not attributable to the transmission licensee or

its supplier or its contractors. Therefore, the Commission has committed a patent error in rejecting the claim of the appellant on account of foreign exchange loss on the ground that the appellant had not hedged the foreign exchange exposure.

30. We also note that the Commission has found the entry regarding foreign exchange loss of Rs.31.37 crores in the FY 2013-14 as a notional entry only in the books of account of the appellant. The appellant had submitted before the Commission that the actual profit / loss shall be ultimately reflected in the accounts as and when paid and the same shall be returned / claimed in the ARR for that financial year. We find that the appellant has nowhere disclosed either in the pleadings before us in this appeal or in the written submissions that it has actually paid the said amount of Rs.31.37 crores. Since, we are inclined to remand the issue back to the Commission for fresh consideration, the appellant would be at liberty to provide documentary evidence to the Commission to show that it has actually paid any such amount.

31. Now, coming to the disallowance of Rs.1.92 crores by the Commission, which has been paid by the appellant as DDT in the year 2012-13.

32. Dividend Distribution Tax (DDT) is levied on the payment of dividend by a company to its shareholders. Such tax liability is due to the appropriation

of profit among the shareholders of the company by way of dividend and it would not be payable if there is no distribution of dividend amongst the shareholders.

33. The Commission, while rejecting the claim of the appellant with regards to the sum of Rs.1.92 crores paid by it as DDT, has observed that MYT Regulations, 2011 did not provide any additional tax to be allowed except tax on income limited to tax on RoE component.

34. Learned counsel for the appellant argued that DDT is different from regular income tax on RoE, and therefore, the reasoning given by the Commission is not acceptable. It is argued that DDT is a statutory levy, and therefore, it cannot be denied merely on the ground that MYT Regulations do not provide for it. It is also pointed out that since there is no specific exclusion of DDT as admissible cost / expense of the licensee, the Commission ought to have allowed the amount of DDT which is part of the normal business operations of a company.

35. On behalf of the Commission and respondent No.4, reliance is placed upon Regulation 5.22 of Transmission Regulations, 2011 stating that the regulations only allow tax on income of the transmission licensee to be passed on to the beneficiaries and no additional tax liability. It is further

argued that distribution of dividend is up to an individual company and there is no statutory mandate to issue dividend and therefore, claim of the appellant in this regard is not sustainable.

36. Regulation 5.22 of MYT Regulations, 2011 reads as under:-

“....5.22 Tax on the income streams of the Transmission Licensee shall be recovered from the beneficiaries. Tax on income, if any, liable to be paid shall be limited to tax on return on the equity component of capital employed. Any additional tax liability on account of incentive due to improved performance like higher availability, lower O&M Expenses etc and other income shall not be considered:

Provided that the deferred tax liability, excluding Fringe Benefit Tax, for the period up to 31st March, 2012 whenever it materializes, shall be recoverable directly from the beneficiaries and the long-term customers.

5.23 The actual assessment of income tax should take into account benefits of tax holiday, and the credit for carry forward losses applicable as per the provisions of the Income Tax Act 1961 shall be passed on to the consumers.....”

37. A plain reading of the said regulation reveals that the Commission is mandated not to consider any additional tax liability on account of incentive due to improved performance like higher availability, lower O&M expenses etc. and other income, except the tax on income streams of the transmission licensee. We do not find any force in the submissions of the appellant that since the regulations do not exclude DDT specifically, the Commission ought to have allowed the claim of the appellant. The Regulation 5.22 specifically provides that tax on income streams of the transmission licensee shall be recovered from the beneficiaries and excludes any other tax liability. The word “etc” used after the term “O&M Expenses” in the said regulation would cover all other tax liability incurred by a transmission licensee apart from tax on income streams. Therefore, we do not find any infirmity in the findings of the Commission on the aspect of DDT as the same is as per the applicable regulations.

38. Accordingly, the issue with regards to disallowance of Rs.31.37 crores towards foreign exchange loss alone is remanded to the Commission for a fresh consideration in the light of the applicable regulations and our observations hereinabove.

Issue No.(E)(iii): Incorrect figure taken by the Commission for allowing return on capital employed.

39. No submissions have been made on this issue on behalf of the appellant, and therefore, we affirm the findings of the Commission on the same.

Issue No.(E)(iv): Disallowance of income tax for the years 2012-13 and 2013-14.

40. The appellant has contended that the findings of the Commission on this issue doubly prejudice it for the reason that the Commission has disallowed income tax as pursuant to delay in truing up of the tax assessment is in the negative and in the past, the Commission has disallowed additional tax paid by the appellant on account of delay in truing up for the past financial years.

41. We find it pertinent to extract the conclusion of the Commission on this issue hereunder: -

***3.86** Accordingly, the Commission has not considered the amount of income tax to be allowed in FY 2012-13 and FY 2013-14 as the return filed before the income tax authority has not been finalised yet. As per the*

discussion above there is net refund claimed by the Petitioner from income tax of Rs. 85.25 Crore and Rs. 31.64 Crore. Therefore, the Commission directs the Petitioner to submit the final assessment order of Income tax for FY 2012-13 to FY 2013-14 in order to finalise the claim on account of income tax if any.

42. It appears that in view of the fact that the Commission, instead of outrightly rejecting the appellants claim, has directed it to submit the final assessment order of the income tax for the relevant FYs in order to finalize the claim of income tax, the appellant itself has prayed in the written submissions that the issue may be remanded back to the Commission for fresh consideration. Reference is also made to judgment dated 01.02.2016 of this Tribunal in appeal No.255/2013 wherein it has been held as under: -

“45.4 In our opinion, the Commission has to consider the income tax actually paid by the Appellant with due verification and the same has to be included in the Tariff computation and shall be passed on the beneficiaries. Further, tax on any income other than that through its licensed business shall not be passed through, and it shall be payable by the Transmission Licensee itself. Accordingly, the issue is decided in favour of the Appellant and the issue is remanded back to consider

the Income Tax amount paid with due verification and prudence check."

43. Therefore, we are of the view that there was no reason or occasion for the appellant to assail the findings of the Commission on this issue. Instead, the appellant should have submitted the requisite final assessment orders to the Commission, as directed vide impugned order, in order to assist the Commission in evaluating the claim of appellant properly and in terms of the judgment of this Tribunal in appeal No.255/2013.

44. Hence, the issue is remanded back to the Commission for fresh consideration on the basis of the requisite assessment orders and further documents to be submitted by the appellants.

Issue No.(E)(v): Consideration of Rs.11.71 crores as non-tariff income of the appellants for the year 2012-13.

45. This issue is with regards to consideration of Rs.11.71 crores as non-tariff income of the appellant for the FY 2012-13. It appears from perusal of the impugned order that the Commission has considered the said amount as non-tariff income of the appellant on the ground that said amount was written

back in the books of accounts of appellant which was reflected at Note 20 of the Audited Accounts of the appellant.

46. We feel in agreement with the submissions on behalf of the respondent that the Commission cannot be faulted for considering the audited accounts of the appellants, submitted by the appellant itself, in considering the written off amount of Rs.11.71 crores as non-tariff income.

47. Therefore, the findings of the Commission on the issue are affirmed and the issue is decided against the appellant.

Issue No.(E)(vi): Arithmetical mistake in ARR for the year 2012-13.

48. It is jointly submitted by all the parties that the issue has been considered and rectified by the Commission in subsequent ARR order dated 31.08.2017. Therefore, the issue stands resolved.

Issue No.(F)(i): Non-consideration of escalation in expenses for new asset addition.

49. The appellant is aggrieved by the impugned order in so far as the Commission has not considered additional expenses proposed by the appellant for O&M expenses for new asset additions.

50. According to the appellant, it had claimed only escalation of O&M expenses on account of new assets added and not the expenditure incurred towards addition of new assets, which has already been allowed. It is argued that a regulated entity cannot be expected to cover the O&M expenses of new assets also from the existing O&M expenses.

51. On behalf of the respondents, it is contended that the O&M expenses are controllable in nature and are accordingly, allowed on normative basis. Any deficit on account of O&M expenses on account of licensee cannot be a passthrough in the tariff. It is submitted that nothing has been brought on record on behalf of the appellant to show that additional expenses on new asset additions was of uncontrollable nature.

52. On behalf of the Commission, it is further submitted that in terms of Regulation 5.7 of MYT Regulations, 2011, O&M expenses are determined using the formula mentioned therein which is based upon 'K' factor and the value of 'K' for each year of control period is determined by the Commission in the MYT tariff order based on licensee's filing, benchmarking, approved cost and other relevant factors. It is submitted that the appellant has not assailed the calculation of the escalation factor and is seeking additional parameters that are dehors the regulatory framework.

53. Having heard the learned counsels and having perused the MYT Tariff Regulations, 2011, particularly Regulations 5.5 to 5.6 which provide norms for determination of O&M expenses, we are of the opinion that the O&M expenses determined using the formula given in Regulation 5.7 is for the existing assets of a licensee in the relevant financial year and by no stretch of imagination can be said to cover the O&M expenses for the new asset additions. There is no gainsaying that once a distribution licensee adds new assets, the O&M expenses are bound to increase and therefore the licensee would be within its rights to claim escalation in O&M expenses by reason of new asset additions.

54. Therefore, we are unable to sustain the findings of the Commission on this issue. The same are hereby set aside and the issue is remanded back to the Commission with the directions to consider escalation of O&M expenses of the appellant for new asset additions upon prudence check.

Issue No.(F)(ii): Error in calculation of income tax on Regulated Rate Base instead of the equity as per tariff regulations.

55. The grievance of the appellant is that the Commission has committed an error in calculating the income tax on the Regulated Rate Base (RRB)

instead of RoE as per the applicable tariff regulations i.e. regulation 5.22 of MYT Regulations, 2011. It is submitted on behalf of the appellant that the Commission has failed to appreciate that RRB is only net asset basis where as the RoE is always on gross asset basis and for this reason the regulations provide for calculation of income tax on RoE.

56. Regulation 5.22 reads as under: -

*“5.22 Tax on the income streams of the Transmission Licensee shall be recovered from the beneficiaries. **Tax on income, if any, liable to be paid shall be limited to tax on return on the equity component of capital employed.** Any additional tax liability on account of incentive due to improved performance like higher availability, lower O&M Expenses etc and other income shall not be considered.”*

57. On plain reading of the said regulation, it is evident that the income tax has to be allowed limited to tax on Return on Equity component of the capital employed. There is no mention of RRB in the said regulation. Hence, we find weight in the contention of the appellants on this issue and reiterate that the income tax is to be allowed on the RoE component only and not on RRB.

58. Accordingly, the findings of the Commission on this issue are hereby set aside and the Commission is directed to consider the same afresh in the light of Regulation 5.22 and in terms of our observations hereinabove.

Issue No.(F)(iii): Disallowance of Carrying Cost for the DVB arrears for the year 2014-15.

59. It is submitted on behalf of the appellants itself that the issue has been considered by the Commission in the latest tariff order dated 31.08.2017. Therefore, the same stands resolved.

Conclusion:

60. We summarize our decision on the issues in the following table: -

Sl. No.	Issue No. / Issue	Our decision	In favour of
1.	<u>Issue No.(A):</u> <u>Non-truing up of capitalization for the year 2011-12.</u>	This issue stands already closed.	--
2.	<u>Issue No.(B):</u>	We are unable to sustain the findings of the Commission on	Remanded

	<u>Debt and equity consideration for FY 2010-11.</u>	this issue. The same are hereby set aside. The issue is remanded back to the Commission for fresh consideration in the light of above observations.	
3.	<u>Issue No.(C):</u> <u>Working capital consideration.</u>	This issue was not pressed on behalf of the appellant as the same has already been resolved by the Commission vide subsequent tariff order dated 31.08.2017	--
4.	<u>Issue No.(D):</u> <u>Mistake in calculation of Regulated Rate Base (RRB).</u>	This issue was not pressed on behalf of the appellant as the same has already been resolved by the Commission vide subsequent tariff order dated 31.08.2017.	--
5.	<u>Issue No.(E)(i):</u> <u>Pension trust dues not fully allowed.</u>	The issue is kept pending for the time being and shall be heard after any decision is pronounced by the Delhi High Court in the writ petition nos.1698/2010 and 4311/2013.	--

6.	<u>Issue No.(E)(ii):</u> <u>Certain portion of administrative and general expenses disallowed.</u>	The issue with regards to disallowance of Rs.31.37 crores towards foreign exchange loss alone is remanded to the Commission for a fresh consideration in the light of the applicable regulations and our observations hereinabove.	Remanded
7.	<u>Issue No.(E)(iii):</u> <u>Incorrect figure taken by the Commission for allowing return on capital employed.</u>	No submissions have been made on this issue on behalf of the appellant, and therefore, we affirm the findings of the Commission on the same.	Commission
8.	<u>Issue No.(E)(iv):</u> <u>Disallowance of income tax for the years 2012-13 and 2013-14.</u>	The issue is remanded back to the Commission for fresh consideration on the basis of the requisite assessment orders and further documents to be submitted by the appellants.	Remanded

9.	<u>Issue No.(E)(v):</u> <u>Consideration of Rs.11.71 crores as non-tariff income of the appellants for the year 2012-13.</u>	The findings of the Commission on the issue are affirmed and the issue is decided against the appellant.	Commission
10.	<u>Issue No.(E)(vi):</u> <u>Arithmetical mistake in ARR for the year 2012-13.</u>	It is jointly submitted by all the parties that the issue has been considered and rectified by the Commission in subsequent ARR order dated 31.08.2017. Therefore, the issue stands resolved.	--
11.	<u>Issue No.(F)(i):</u> <u>Non-consideration of escalation in expenses for new asset addition.</u>	We are unable to sustain the findings of the Commission on this issue. The same are hereby set aside and the issue is remanded back to the Commission with the directions to consider escalation of O&M expenses of the appellant for new asset additions upon prudence check.	Remanded

12.	<u>Issue No.(F)(ii):</u> <u>Error in calculation of income tax on Regulated Rate Base instead of the equity as per tariff regulations.</u>	The findings of the Commission on this issue are hereby set aside and the Commission is directed to consider the same afresh in the light of Regulation 5.22 and in terms of our observations hereinabove.	Remanded
13.	<u>Issue No.(F)(iii):</u> <u>Disallowance of Carrying Cost for the DVB arrears for the year 2014-15.</u>	It is submitted on behalf of the appellant itself that the issue has been considered by the Commission in the latest tariff order dated 31.08.2017. Therefore, the same stands resolved.	--

61. Appeal stands disposed off accordingly.

Pronounced in open court on this the 30th day of April, 2025

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

√
REPORTABLE / NON-REPORTABLE

tp

COURT-2

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 8 OF 2016 & IA No. 1106 OF 2025

Dated: 17th July, 2025

Present : Hon`ble Mr. Sandesh Kumar Sharma, Technical Member
Hon`ble Mr. Virender Bhat, Judicial Member

In the matter of:

Delhi Transco Ltd. Appellant(s)

Versus

Delhi Electricity Regulatory Commission & Ors. Respondent(s)

Counsel on record for the Appellant(s) : Pradeep Misra
Manoj Kumar Sharma
for App. 1

Counsel on record for the Respondent(s) : Dhananjay Baijal
for Res. 1

Ashutosh Kumar Srivastava
Akshat Jain
Rahul Kinra
Amit Kapur
Anupam Varma
for Res. 4

ORDER

IA No. 1106 OF 2025
(For modification)

The application has been moved for seeking correction of the typographical errors. As part of our “Analysis” under Para 12, the figure regarding “equity opening” is mentioned as Rs.239.72 crores, however, this figure under Para 15 has been incorrectly typed as Rs.39 cores. Accordingly, Para 15 is modified as:

“15. Be that as it may, the fact remains that the Commission has in the impugned order neither considered the conversion of Rs.239.72 crores of debt by the Government of NCT of Delhi into equity as well as further infusion of equity for Rs.80 crores by the holding company Delhi Power Company Limited, as done in the order dated 31.07.2013, nor has given any reason for non-consideration of the same.”

Under Para 20, reference is made to Writ Petition (C) No. 1698/2010. However, it has been incorrectly noted under Para 22 as Writ Petition No.1698/2021. The same stands corrected by this order to be read as Writ Petition (C) No.1698/2010. Accordingly, Para 22 is modified as:

“22. It is submitted on behalf of the Commission that since the issue involved in this appeal is similar to the issue involved in appeal no. 281 of 2015 and regarding which the proceedings are also pending before the Hon’ble Delhi High Court, the decision on the instant issue may be deferred till after the decision of the High Court in the Writ Petition (C) Nos.1698/2010 and 4311/2013.”

The amendments to the judgment shall be uploaded.

The IA is disposed of accordingly.

Virender Bhat
Judicial Member

Sandesh Kumar Sharma
Technical Member (Electricity)

Pr/tp