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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 369/2026 CM APPL. 30855/2026 CM APPL. 30856/2026**

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1

.....Appellant

Through: Mr. Ruchir Bhatia, SSC

versus

SHAHI EXPORTS PVT. LTD.

.....Respondent

Through: Mr. M.P. Rastogi, Mr. Kaushik, Mr.
Shivam Malik and Mr. Ram Naresh,
Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

08.05.2026

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1. By way of instant appeal, the appellant has challenged the order dated 27.06.2025 passed by the Income Tax Appellate Tribunal, 'H' Bench, New Delhi (*hereinafter referred to as 'the Tribunal'*) for the Assessment Year 2021-22, whereby the appeal filed by the assessee was partly allowed.
2. While allowing the appeal *qua* the issue of transfer pricing adjustment of Rs. 33,59,64,275/- on account of transfer of power read with Section 92F read with Section 80IA of the Income Tax Act, 1961, the Tribunal has relied upon the judgment of this Court dated 21.01.2025 rendered in the case of ***Principal Commissioner of Income-tax v. DCM Shriram Ltd.*** reported in (2025) 478 ITR 385.
3. Mr. Ruchir Bhatia, learned Senior Standing Counsel is not in a position to distinguish the facts of the present case from the facts and law



laid down by this Court in the case of **DCM Shriram Ltd.** (supra).

4. In view of the aforesaid, we have no other option but to dismiss the appeal in the light of judgment of this Court in the case of **DCM Shriram Ltd.** (supra) wherein this Court has held as thus:

“43. In the present case, the question is to determine the market value or the ALP of power supplied by power plants established by the Assessee to its other units. Supplying of electricity is governed by the Electricity (Supply) Act, 1948 and Electricity Act, 2003. The transmission of electricity is also governed by the Electricity Rules, 2005.

44. Thus, the market for supply of electricity is regulated. Thus, to apply the CUP method, it would be necessary to ascertain the comparable transactions that are similar in material aspects and there is no difference between the transactions which has a bearing on the price of the power supplied.

45. The question whether the average IEX rate at which power is traded on IEX, is a comparable uncontrolled transaction, is required to be evaluated by determining whether there are any differences between the specified domestic transaction and the uncontrolled transaction of trade on the IEX.

46. The Assessee states – and the same is not controverted – that the availability of power on IEX is unpredictable and the supply of power is unreliable.

47. It is stated that in order for a party to purchase power from IEX, the said party has to participate in the bidding process. The same entails furnishing a bid in advance for supply of fifteen minutes slots. Illustratively, it is stated that if a party requires power supply for a period of four hours, it would be required to submit sixteen bids for fifteen minutes slots. Further, the bidder cannot resile from the bids furnished by it in advance.

48. In view of the above, it is contended that power traded on IEX cannot be compared with the power supplied by a SEB.

49. It is not disputed that IEX is a platform, which is used by



power producing units to sell surplus power for short term requirements. IEX is not a platform for sourcing continuous power for power consuming units. It is also pointed out that there is a high level of volatility in the IEX rates as it depends on immediate availability of surplus electricity.

50. It is also contended by the Assessee that the rates quoted on IEX are in respect of power supplied and not the power that is consumed and therefore, there is a material difference between the power that is purchased from IEX and the power which is supplied by the SEBs or power distribution companies. The said submission is also not controverted. The Assessee claims that it had on occasions purchased power from IEX.

51. We find considerable merit in the Assessee's contention that the transactions of sale and purchase of power on the IEX is not comparable to the regular supply of power by the SEB or the power distribution companies. Undisputedly, IEX is not a source for uninterrupted power on the basis of which any power consumer can set up its unit. It is also not disputed that there is a wide fluctuation in the IEX rates. The Revenue has also not controverted the assertion that rates for power quoted on IEX are for power purchased and not for power consumed. Thus, if an entity bids for certain quantity of power on IEX and is successful, it is required to pay for the same. However, the electricity supplied by power distribution companies is charged on the basis of the power consumed, which is recorded in the metering devices.

52. It is also clear that the said material differences between the electricity supplied by SEBs or power distribution companies and those secured by bidding on IEX would have a significant bearing on the price of power.

53. As noted above, the CUP method is an appropriate method only in cases where there is sufficient degree of identity between the tested transactions and comparable uncontrolled transactions. The CUP method cannot be applied where there is significant dissimilarity between the comparable transactions and it is not feasible to determine an adjustment to eliminate the impact of the said differences



on the prices of comparable transactions.

54. In the present case, the Assessee had supplied excess power to UPPCL in UP region at the rate of ₹4.39 per kWh. Thus, the said transaction was accepted by the learned DRP as well as the learned ITAT as an internal uncontrolled transaction. The rate at which such electricity was supplied by the Assessee being ₹4.39 per kWh, was rightly accepted as an ALP.

55. As noted above, the learned ITAT also accepted the rates at which electricity was supplied by the SEBs/power distribution companies to the Assessee in Gujarat and Rajasthan regions as the said rates was considered as an external CUP.

56. Undoubtedly, there is a degree of similarity between the transaction of supply of electricity by SEBs to the Assessee and the supply of electricity by the Assessee's eligible units. However, there is a difference between the transactions being benchmarked, which is supply of electricity by captive units, and the transaction of supply of electricity by distribution companies/corporations. The power distribution companies enjoy a near monopoly status. The tariff charged by such companies are regulated tariffs. However, we accept that there is a sufficient degree of similarity between the said transaction for reasonably determining the ALP by using the CUP method.

57. We also consider it apposite to refer to the recent decision of the Supreme Court in Commissioner of Income Tax v. Jindal Steel and Power Limited. 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 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 ₹2.32 per unit. However, the Assessee had computed the revenue from supply of electricity to its own unit at the rate of ₹3.72 per unit. It was the Assessee's case that the market value of the electricity was ₹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.

58. The Revenue had approached the Supreme Court assailing the orders passed by the learned ITAT and the High Court. In the aforesaid context, the Supreme Court had held as under:

“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.

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.”

[emphasis added]

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.

61. The appeal is dismissed in the aforesaid terms.”

5. In view of above, the appeal is dismissed along with the pending applications.

DINESH MEHTA, J

AMIT MAHAJAN, J

MAY 8, 2026/ss