

Bses Rajdhani Power Limited & Anr vs Delhi Electricity Regulatory ... on 29 May, 2026

Judgement in Appeal Nos. 92 of 2016 &

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 92 OF 2016
AND
APPEAL No. 93 OF 2016

Dated: 29th MAY, 2026
Present: Hon`ble Ms. Seema Gupta, Officiating Chairperson
Hon`ble Mr. Virender Bhat, Judicial Member

APPEAL NO. 92 OF 2016

In the matter of:

1. BSES Rajdhani Power Limited,
BSES Bhawan,
Nehru Place,
New Delhi - 110019

2. BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma,
Delhi - 110092

VERSUS

1. Delhi Electricity Regulatory Commission
Through its Secretary,
Viniyamak Bhawan,
'C' Block, Shivalik,
Malviya Nagar, New Delhi 110017

2. Indraprastha Power Generation Company Limited
Himadri Rajghat Power House Office Complex
New Delhi-110002.

... Appellant

.... Responde

Counsel on record for the Appellant(s) : Mr. Buddy Ranganadhan, Sr. A

Mr. Amit Kapur
Mr. Anupam Varma
Mr. Rahul Kinra
Ms. Aditya Ajay
Ms. Aditya Gupta
Mr. Girdhar Gopal Khattar
Ms. Adamyia Ojha
Mr. Yash Srivastava
Mr. Vaibhav Sharma for App. 1 &

Counsel on record for the Respondent(s) : Shikha Ohri for Res. 1

Anand K. Ganesan
Swapna Seshadri for Res. 2

APPEAL NO. 93 OF 2016

In the matter of:

1. BSES Rajdhani Power Limited,
BSES Bhawan,
Nehru Place
New Delhi - 110019

2. BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma,
Delhi - 110092

... Appellant

VERSUS

1. Delhi Electricity Regulatory Commission
Through its Secretary,
Viniyamak Bhawan,
'C' Block, Shivalik,
Malviya Nagar, New Delhi 110017

2. Pragati Power Corporation Limited
Himadri Rajghat Power House Office Complex
New Delhi-110002.

.... Respondent

Counsel on record for the Appellant(s) : Mr. Buddy Ranganadhan, Sr. Adv

Mr. Amit Kapur
Mr. Anupam Varma
Mr. Rahul Kinra
Ms. Aditya Gupta
Ms. Aditya Ajay
Mr. Girdhar Gopal Khattar
Ms. Adanya Ojha
Mr. Yash Srivastava
Mr. Vaibhav Sharma for App. 1

Counsel on record for the Respondent(s) : Shikha Ohri for Res. 1

Anand K. Ganesan
Swapna Seshadri for Res. 2

JUDGEMENT

PER HON'BLE MRS. SEEMA GUPTA, OFFICIATING CHAIRPERSON

1. Appeal No. 92 of 2016 has been filed by M/s BSES Rajdhani Power Limited ("BRPL") and BSES Yamuna Power Limited ("BYPL"), (herein referred as "Appellants"), challenging the tariff order dated 29.09.2015 in Petition No. 14 of 2015 ("Impugned Order 1") for True Up for FY 2012-13 to FY 2014-15 and Aggregate Revenue Requirement for FY 2015-16 filed by Indraprastha Power Generation Company Limited (hereinafter referred as "IPGCL") passed by the Delhi Electricity Regulatory Commission (herein after referred as "DERC/State Commission").

2. Appeal No. 93 of 2016 have been filed by M/s BSES Rajdhani Power Limited ("BRPL") and BSES Yamuna Power Ltd. Limited ("BYPL"), ("Appellants"), challenging the tariff order dated 29.09.2015 in Petition No. 15 of 2015 ("Impugned Order 2") for True Up for FY 2012-13 to FY 2014-15 and Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 Aggregate Revenue Requirement for FY 2015-16 filed by Pragati Power Generation Company Limited (hereinafter referred as "PPCL") passed by the Delhi Electricity Regulatory Commission (hereinafter referred as "DERC/State Commission").

Description of Parties (Appeal No.92 of 2016 & 93 of 2016)

3. The Appellant No1 - BSES Rajdhani Power Limited. ("BRPL"), and the Appellant No.2 - BSES Yamuna Power Ltd. ("BYPL"), are companies incorporated under the Companies Act, 1956 and are an electricity Distribution Licensee under the Electricity Act, 2003 read with the Reforms Act engaged in the business of distribution and retail supply of electricity in the Central East Circles of National Capital Territory of Delhi (BYPL) and South West Circles of National Capital Territory of Delhi (BRPL) respectively. Their functions are under the regulatory control and supervision of State Commission.

4. Respondent No.1 - Delhi Electricity Regulatory Commission is a statutory Regulatory Commission constituted under the provisions of the Electricity Act, 2003.

5. In Appeal No.92 of 2016, Respondent No. 2 is Indraprastha Power Generation Company Limited ("IPGCL"), registered under the Companies Act, 1956 and is a generation company in accordance with Section 2(28) of the Electricity Act, 2003.

6. In Appeal No.93 of 2016, Respondent No. 2 is a Pragati Power Corporation Limited ("PPCL") is a company registered under the Companies Act, 1956 and is a generation company in accordance with Section 2(28) of the Electricity Act, 2003.

Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 Factual matrix of the Case:

7. On 16.02.2015, IPGCL filed Petition No. 14 of 2015 (Respondent No 2 in Appeal No. 92 of 2016) and PPCL filed Petition No. 15 of 2015 (Respondent no 2 in Appeal No. 93 of 2016) for True-Up of FY 2012-2013 to FY 2014-15, approval of the ARR and applicable Tariff for FY 2015-16. On 05.08.2015, a public hearing was held on the Petitions of licensees wherein the Appellants submitted their comments/objections.

8. On 29.09.2015, the DERC issued the respective Impugned Tariff Orders, however aggrieved by the impugned orders, the Appellants have filed the present Appeals on 13.01.2016.

9. Appellants have raised following five issues in the appeal:

Issue 1 : Incorrect consideration of Station Heat Rate of IPGCL's Rajghat Power Station ("RPH") and Gas Turbine Power Station ("GTPS"), Issue 2 : Incorrect consideration of Auxiliary Consumption for IPGCL's RPH and GTPS, Issue 3 : incorrect consideration of Availability for GTPS Issue 4 : Incorrect approval of Operation and Maintenance expenses for FY 2015-2016, Issue 5 : Non-refund of Income Tax to DISCOMs

10. During the course of hearing, it is submitted on behalf of Appellants that they are not pressing Issue 1, Issue 2 and Issue 4 at this stage with liberty reserved to raise the same at an appropriate stage, if required and only Issue No Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 3 and Issue No 5 (highlighted) arise for consideration and adjudication by this Tribunal in the present Appeal. Liberty as sought is granted.

11. Appellants have raised following three issues in this appeal:

Issue 6 : Incorrect consideration of Auxiliary Consumption for PPCL project Issue 7 : Incorrect consideration of Availability for PPCL plant Issue 8 : Non-refund of Income Tax to DISCOMs

12. During the course of hearing, it is submitted on behalf of Appellants that they are not pressing Issue No 6 at this stage with liberty reserved to raise the same at an appropriate stage, if required and only above referred Issue No 7 and Issue No 8 (highlighted) arise for consideration and adjudication by this Tribunal in the present Appeal. Liberty as sought is granted.

13. Since the issues involved in both the appeals are of similar nature, though impugning different orders in separate petitions filed by IPGCL and PPCL, both the appeals are being disposed of by this common judgement.

ANALYSIS AND DISCUSSION

14. Heard Mr. Buddy Ranganathan, learned Senior Counsel appearing on behalf of the Appellants, Ms. Shikha Ori, learned counsel on behalf of State Commission, Ms. Swapna Seshadri on behalf of IPGCL and PPCL, the Respondent No 2, in both the Appeals, on the balance issues, perused the Impugned Orders, written submissions filed by respective parties and other documents. The issues are deliberated in following paragraphs:

Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 ISSUE NO. 3: INCORRECT CONSIDERATION OF AVAILABILITY FOR GTPS (Appeal No 92 of 2016) ISSUE 7 : INCORRECT CONSIDERATION OF AVAILABILITY FOR PPCL (Appeal No. 93 of 2016)

15. Issue pertains to the availability (%) of IPGCL's Gas Turbine Power Station ("GTPS") & PPCL's plant allowed by the DERC in the Impugned Orders, both while truing-up the availability for FY 2012-13 and FY 2013-14 for these projects, and while approving the projected availability for these projects for FY 2015-16. In the Impugned Orders, following Plant Availability Factor (PAF) has been approved for referred projects in the Impugned Order:

A) IPGCL (GTS): FY 2012-13; 84.22 %. FY 2013-14; 85.76 %. In view of having achieved higher availability than target availability of 80 % in these years, availability of 80 % was approved for FY 2015-16, as proposed by IPGCL.

B) PPCL: FY 2012-13; 90.50 %. FY 2013-14; 92.62 %. In view of having achieved higher availability than target of 85 % in these years, availability of 85 % was approved for FY 2015-16, as proposed by PPCL

16. The Plant Availability Factor ("PAF") of a generating station represents the percentage of time it is available to supply energy to the grid, and such availability can only be declared on the basis of firm commitment of fuel and in the absence of assured fuel supply, a generating plant cannot declare full availability. In both the appeals, Appellants have contended that IPGCL and PPCL have wrongly declared the availability as they did not have adequate fuel supply even for achieving Normative availability of 80% (gas requirement 1.28 MMSCMD) for GTPS (IPGCL) and 85% (gas requirement 1.36 MMSCMD) for PPCL, while much higher actual availability was allowed for these projects in FY 2012-13 and FY Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 2014-15 and normative availability projections for FY 2015-16. It is further submitted that in both the cases, despite asserting on affidavit that no gas was being diverted from GTPS and PPCL plant, gas was diverted to other generating stations in the NCT of Delhi, including PPCL-III, as evidenced by (i) email dated 25.03.2014 issued by PPCL seeking consent from beneficiaries, including the Appellants, for swapping gas from GTPS and PPCL-I to PPCL-III, (ii) letter dated 03.09.2015 issued

by PPCL stating that, pursuant to approval from the Ministry of Petroleum and Natural Gas ("MoPNG"), swapping of APM gas from GTPS and PPCL-I was permitted from February 2013, non-APM gas from 01.09.2014, and R-LNG gas from 21.07.2015 to PPCL-III, and (iii) minutes of meeting dated 27.03.2015 of the State Load Dispatch Centre ("SLDC") directing diversion of gas from GTPS to PPCL-III.

17. Per Contra, it has been submitted on behalf of Respondents No 2, IPGCL & PPCL that during the relevant period, both IPGCL and PPCL have contracted sufficient quantities of various commercially available sources of natural gas, thereby enabling it to legitimately declare a higher Plant Availability Factor ("PAF") and in fact Appellants are taking advantage of IPGCL inadvertently filing GSA for the period 01.01.2016 to 05.07.2021 for the period under consideration. Respondents No 2 vide affidavit dated 05.02.2026 and notes dated 25.03.2026 submitted various agreements entered by IPGCL & PPCL to establish availability of following total quantities of gas for these substations for the period under consideration.

Name of Station	of APM	PMT	Non - APM	R-LNG Total	Qty in MMSCMD
GTPS (IPGCL)	0.84	0.13	0.23	0.60	1.80

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Name of Station	of APM	PMT	Non - APM	R-LNG Total	Qty in MMSCMD
PPS - I (PPCL)	1.75	0.28	0.02	0.20	2.25

18. It is to note that the Appellants have not disputed

agreements/documents submitted by Respondents no 2 and thus from above table, it is clearly established that both GTS project of IPGCL and project of PPCL, had sufficient fuel tie up; i.e. of 1.8 MMSCMD for GTPS and 2.25 MMSCMD for PPCL and they were in a position to declare availability more than Normative Availability for these projects and thus contention of Appellant in this regard has no merit and is rejected.

19. The Respondents No. 2 (IPGCL and PPCL) in both the appeals have refuted the contention of Appellants, that due to diversion of gas from the stations of IPGCL and PPCL, availability of plants was misrepresented, being unsubstantiated, and stated that as such SLDC had affirmed month-on-month availability for these projects which was taken into consideration by the State Commission at the time of passing the impugned Order. The Appellants have, however, contended

that State Commission should have undertaken the prudence check on its own instead of accepting the availability figures as submitted by Respondents IPGCL and PPCL.

20. We note from the Impugned Orders that State Commission has got the PAF submitted by Respondents No 2 confirmed from the State Load Despatch Centre; relevant paragraph from the Impugned Orders are extracted hereunder:

"Impugned Order (in Appeal 92 of 2016) 3.144 The Commission in its MYT Generation Regulations, 2011 and MYT Order, 2012 has approved the availability of 80% for FY 2012-13 to FY 2014-15. It has been observed that the petitioner had achieved higher availability than the target Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 availability. Further, the Commission verified with SLDC the plant availability (%) of GTPS for FY 2012-13 and FY 2013-14 submitted by the Petitioner and it was observed that the figures submitted by the Petitioner match with those shared by SLDC. Therefore, the Commission has considered the figures as submitted by the Petitioner, which are 84.22 % and 85.76 % for FY 2012-13 and FY 2013-14 respectively. Accordingly, fixed / capacity charges have been computed as per the Regulation 7.12 of MYT Regulations, 2011, extract of which is reproduced below.

"Full Capacity Charges shall be recoverable at Normative Annual Plant Availability Factor (NAPAF) specified in clause 7.1,7.3 of these Regulations. Recovery of Capacity Charges below the level of Normative Annual Plant Availability Factor (NAPAF) shall be on a pro-rata basis. At zero availability, no Capacity Charges shall be payable."

Impugned Order (Appeal 93 of 2016), 3.19 The Commission in its MYT Generation Regulation 2011 and MYT Order dated July 13, 2012 has approved the availability of 85%. Petitioner during the control period had achieved plant availability higher than the target. The Commission in its additional queries during prudence check sessions directed the Petitioner to submit a confirmation from SLDC certifying the actual availability of PPS-I during the Control Period. The Petitioner has submitted the same to substantiate the availability submitted by them in the Petition.

3.20 The Commission directed SLDC to submit the plant availability of PPS-I for the FY 2012-13 & FY 2013-14. The data submitted by the Petitioner was verified with the data received from SLDC and it was observed that the figures are matching; therefore, the actual availability has been approved as claimed by the Petitioner.

21. It is pertinent to note that as per Section 32 (2) of the Electricity Act, the State Load Despatch Centre shall " be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensee or the generating companies operating within that State'. Thus, the statutory scheme under Section 32 of the Electricity Act, 2003 entrusts the State Load Despatch Centre (SLDC) with the responsibility of ensuring the integrated and secure operation of the State grid and, in discharge of this mandate, the SLDC is required to validate and confirm the availability declared Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 by generating stations connected to the grid. Such confirmation is not a mere ministerial act but constitute a

substantive regulatory function, involving scrutiny of the declared capacity against technical parameters, transmission constraints, agreements and grid security considerations. The SLDC's confirmation of availability forms the basis for scheduling and despatch, and directly underpins the commercial settlement framework under the Availability Based Tariff regime. It ensures that the declared availability is realistic, consistent with prudent grid operation, and aligned with the larger objective of maintaining reliability, transparency, and fairness in the electricity market. Accordingly, the SLDC's role in confirming availability is integral to both grid discipline as well as safeguarding consumer interest.

22. The Appellants have sought to rely upon certain communications to contend that the referred generating stations in question did not have sufficient gas supply to declare availability claimed by them, asserting that consent of beneficiaries was sought for diversion of gas from these projects. Upon careful scrutiny, we find that these communications do not establish that the projects in question were lacking adequate fuel supply. In fact, in the letter dated 03.09.2015, PPCL and IPGCL, have refuted the allegations of Appellants with regard to wrongful declaration of availability for the said projects. In the minutes of meeting dated 27.03.2015 relied upon by the Appellants, which also records the presence of State Load Despatch Centre (SLDC), pertain to closure of various intra-State projects, including referred projects of PPCL and IPGCL, on several other counts, and not on account of shortage of fuel for these projects. In fact, it is the same SLDC, who participated in the meeting, which has also confirmed the availability declared for the referred projects for the relevant period under consideration.

Judgement in Appeal Nos. 92 of 2016 & 93 of 2016

23. It is a settled principle that mere reference to administrative communications cannot displace the probative value of statutory confirmations issued by the SLDC, which is the designated authority under the Electricity Act, 2003 for optimum scheduling and despatch of electricity, in which availability of various generating projects is the important component. The Appellants have not produced any cogent material to demonstrate that the generating stations did not have adequate fuel to declare/ achieve the Plant Availability Factor (PAF) as approved by the State Commission. On the contrary, Respondent No. 2 has placed on record evidence of fuel tie-ups exceeding the requirement for normative availability, thereby satisfying the applicable statutory standard.

24. In the absence of credible evidence to the contrary, and in view of the sufficiency of fuel arrangements, the confirmation of availability by the SLDC, as accepted and acted upon by the State Commission in Impugned Order 1 and Impugned Order 2, cannot be doubted. The Commission's reliance on SLDC certification is consistent with the statutory scheme under Sections 32 of the Electricity Act, 2003.

Accordingly, we find no infirmity in the impugned orders on this issue under consideration.

In view of the foregoing deliberation, we discern no error in the impugned orders on the issue under consideration. The findings therein are accordingly upheld.

ISSUE NO. 5 (Appeal No. 92 of 2016) & ISSUE NO 7 (Appeal No 93 of 2016) : NON REFUND OF INCOME TAX TO DISCOMS

25. The issue pertains to non true up of Income tax recovered by IPGCL and PPCL by the State Commission for the period FY 2007-2012. In the case of IPGCL (Appeal No 92 of 2016) , Appellants submitted that by Tariff Order dated Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 31.07.2013, DERC had trued up the financials for the control period 2007-12; however, income Tax was not trued up and it was expected that the same would be undertaken in the Impugned Order. However, DERC issued a letter dated 12.11.2015, allowing the income tax actually payable by IPGCL for FY 2007-12 to be passed through in the generation tariff, and have failed to provide any basis or computation for the income tax so allowed, as well as to account for carrying cost on the excess amount charged by IPGCL.

26. From the submissions made by the parties there is no dispute, that both IPGCL and PPCL can only be allowed to recover Income Tax to the extent of RoE in its generation tariff and not based on the actual tax paid. In this context, it is profitable to extract relevant Regulation 6.27 of Generation Tariff Regulation 2007, applicable from May 2007 and Regulation 6.37 of Generation Tariff Regulations, 2011, applicable with effect from April 01,2012 "MYT Generation Tariff Regulation 2007 "6.27 Tax on income, if any, liable to be paid shall be limited to tax on return on the equity component of capital deployed. However any tax liability on incentives and savings due to improved performance and UI earnings, if any, shall not be considered for passing onto the Beneficiaries".

MYT Generation Tariff Regulation 2011 6.37 Tax on the income streams of the generating company 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 station heat rate, lower auxiliary consumption, 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."

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27. The State Commission in its order dated 11.02.2015, in Petition No 15/2013 "Tata Power Delhi Distribution Ltd Vs IPGCL" which has been referred to by State Commission in its above referred letter 12.11.2015 has also stated that the Discom's liability for income tax is on Return on Equity (RoE) basis.

28. This Tribunal in its Judgment dated 21.07.2025 in Appeal Nos. 69-72 of 2018 titled BRPL v. DERC, considering similar regulations for the same period in respect of distribution licensees, directed that income tax be allowed on the basis of Return on Equity (RoE). Relevant paragraph is extracted below:

"223.It is evident that the Commission has not followed these directions and got carried away with the observations that the utility must not gain or lose on account of income tax made in the context of grossing up of income tax. It simply allocated the actual tax paid by the Appellant, for the company as a whole, in proportion to their respective book profit; therefore, there is no consideration of choosing different methodologies and deciding the lower of those.

224.In any event, whether the tax to be allowed on RoE or the actual Tax paid has to be consistent. Either it is on RoE or actual. The 'lesser of the two' as adopted by the Commission is not only contrary to the above noted of this Tribunal but also contrary to the regulations framed by the Commission itself.

225.Hence the Commission is directed to compute and allow the Tax based on ROE. The issue, thus, is decided in favour of the Appellant."

[Emphasis Supplied] It is to note that the State Commission vide its letter dated 12.11.2015 has indicated liability of additional income tax approved to be billed to the beneficiaries for IPGCL for the period from 2007-12 as under:

(Rs. in Cr.) Particulars	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Judgement in Appeal Nos. 92 of 2016 & 93 of 2016	Additional 2.79	4.03	10.69	11.23	11.58
Income tax					

29. The State Commission vide its letter dated 07.01.2016, clarified that additional liability as assessed pertains to respective years and any recovery or refund of income tax dues shall be along with relevant carrying cost in accordance with applicable MYT Regulations 2007 & 2011. Learned Counsel on behalf of State Commission submitted that Regulation 6.28 of the MYT Generation Tariff Regulations, 2007, expressly provides that recovery of income tax shall be effected directly by the generating company from the beneficiaries without requiring any application before the Commission, with a proviso that in case of any objection, the beneficiaries may make an appropriate application before the Commission, and in the present case, no such application was filed by the Appellants, and therefore, the recovery mechanism adopted was in accordance with the applicable regulatory framework and vide letter dated 12.11.2015, State Commission approved additional income tax liability for IPGCL to be billed to the beneficiaries.

30. Appellants have however contended that, IPGCL is liable to credit approximately Rs. 19.46 Crore to BRPL and Rs. 12.71 Crore to BYPL in respect of Rajghat Power Station, and Rs. 26.01 Crore to BRPL and Rs. 16.97 Crore to BYPL in respect of Gas Turbine Power Station for the period FY 2007-08 to FY 2011-12 and sought remand of the matter to State Commission for recomputation and refund to be effected along with the carrying cost.

31. Per Contra, it has been contended on behalf of Respondent No 2-IPGCL that in fact, it is IPGCL, who has suffered prejudice; for the period FY 2007-08 Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 to FY 2011-12, as the income tax billed by the IPGCL amounted to Rs. 123.38 Crore (inclusive of carrying cost of Rs. 21.39 Crore), whereas the State Commission, vide its letter dated 12.11.2015, computed the income tax liability for the said period as Rs. 40.32 Crore, and accordingly excess charges were refunded by IPGCL through credit notes dated 10.02.2016 (Rs. 14,42,67,889.00 to BRPL and Rs. 9,52,45,356.00 to BYPL) and vide note dated 29.06.2017 (Rs.

11,96,10,061.00 to BRPL and Rs. 7,87,77,804.00 to BYPL); however, subsequent computations reveal that the actual income tax, even on RoE basis, amounts to Rs. 53.38 Crore, as against Rs. 40.32 Crore allowed by the State Commission, and therefore, if the contentions advanced by the Appellants are accepted, and issue remanded to State Commission, the Respondents would, in fact, become entitled to recovery of the under-recovered income tax.

32. It is an admitted position that the liability of Appellants for income tax is confined to income tax on Return on Equity. The dispute is with regard to difference in the calculation of refund amount between the Appellants and Respondent No.2-IPGCL. As such there is no adverse finding in the Impugned Order 1 qua the Appellants with regard to income tax for the period under consideration and, therefore there is nothing in the Impugned Order 1 warrants interference or setting aside on the issue. We however note that both Appellants as well as the Respondents have fairly consented for remand of the matter to the State Commission for reconsideration of the computation of the refund amount in accordance with law. .

33. Regarding the prejudice caused to the Respondent No.2 -IPGCL with regard to Income tax liability, we take note that since Respondent No 2 - IPGCL have neither challenged the refund order passed by the State Commission, according to which they sought to have refunded the extra income tax to the Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 Appellants, nor preferred any independent appeal against the said direction and in absence of any such challenge, the order/ refund amount so calculated by the State Commission has attained finality insofar as they are concerned. It is a settled principle of law that a party who has not assailed an adverse finding or order cannot be entitled to relief in an appeal filed by the opposite party, as is being contended by them now. Therefore, the Respondent- IPGCL, having acquiesced to and accepted the refund order passed by the State Commission, are not entitled to claim any relief for them in the present proceedings beyond the scope of the appeal preferred by the other party. In this regard, reference may be made to the judgment of the Hon'ble Supreme Court in "Banarsi v. Ram Phal" 2003 (9) SCC 606, wherein it was held that in the absence of any appeal or cross-objection by the respondent, the Respondent cannot seek a relief adverse to the appellant or seek reversal of findings which have attained finality against such respondent. The Supreme Court observed that a party which has not challenged an adverse finding cannot be placed in a more advantageous position in an appeal preferred by the opposite side. The aforesaid principle has consistently been followed to uphold the sanctity and finality of adjudicatory proceedings. Thus, the Respondent No 2 -IPGCL is not entitled to any relief under the present appeal.

34. In view of above deliberations, we find it just and proper to remand the issue to State Commission for the limited purpose of working out the liability of income tax of the Appellants limited to Return on Equity with regard to IPGCL for the period 2007-08 to FY 2011-12, after considering refund already effected by IPGCL for the said period, In the event any excess recovery by IPGCL from the Appellants is found upon such determination, the same shall be refunded along with carrying cost, in accordance with the applicable Regulations. In the case of PPCL (Appeal No 93 of 2016) also, Appellant have contended that the State Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 Commission has not true up excess Income tax recovered by PPCL for the period from FY 2006-07 to FY 2011-12 in the Impugned Order 2, and State Commission, in its reply, has admitted that since PPCL did not file a petition to refund of Income tax, same was not undertaken; however non-filing of Petition by PPCL cannot be the valid ground for not true-up of the accounts of PPCL. In support of the aforesaid contention, reliance has been placed upon the Tribunal judgement dated 11.11.2011 in O.P. No. 1 of 2011 [2011 SCC OnLine APTEL 173], wherein it has been held that in cases of delay in filing tariff petitions, the State Commission is empowered and obligated to suo motu initiate proceedings for determination of tariff in accordance with law.

35. It is contended on behalf of the State Commission, that for the relevant period, recovery of income tax was to be done by the generating company directly from the beneficiaries, without making any application before the Commission; and in the event the beneficiaries had any objection to the amounts claimed on account of income tax, the beneficiaries had the liberty to make an appropriate application before the Commission. However, no such application was made by the Appellant before the Commission.

36. The Appellant have contended that in the case of PPCL, the refund works out to approximately Rs. 15.04 Crore to BRPL and Rs. 14.10 Crore to BYPL. Appellants have prayed for remand of the issue to State Commission for true up of accounts of PPCL for the period 2007-12. In the Impugned Order 2, the State Commission has undertaken the true up for FY2012-13 and FY2013-14 and generation tariff for FY 2015-16. With regard to true up for earlier years, Appellants themselves have confirmed that true up for PPCL for FY 2006-07 to FY 2011-12 was undertaken by the state Commission vide its order dated Judgement in Appeal Nos. 92 of 2016 & 93 of 2016 31.07.2013, and that only true up of income tax was remained to be considered, which they expected would be carried out in the Impugned Order 2.

37. In view of the aforesaid position, the reliance placed by the Appellants upon the judgment of this Tribunal in O.P. No. 1 of 2011 [2011 SCC OnLine APTEL 173] is misplaced and distinguishable on facts. The said judgment pertains to the obligation of the State Commission to suo motu initiate tariff determination proceedings in cases where tariff petitions are not filed within the prescribed time. In the present case, however, the true-up proceedings for the relevant period had admittedly already been undertaken by the State Commission, and the dispute is confined only to the aspect of reconciliation/true-up of income tax. Therefore, the ratio of the aforesaid judgment has no application to the facts and circumstances of the present case.

38. Our attention has not been drawn towards the reasons, for which true up of income tax was not taken up in the True Up Order for FY 2006-07 to FY 2011-12 dated 31.07.2013 by the State

Commission. We take cognizance of Regulation 6.28 of MYT Generation Tariff Regulation 2007, as referred by the State Commission and same is extracted hereunder:

"Recovery of Corporate Income Tax 6.28 Recovery of income tax shall be done directly by the Generating Company from the Beneficiaries without making any application before the Commission.

Provided that in case of any objections by the Beneficiaries to the amounts claimed on account of income tax, the Beneficiaries shall make the payments and may make an appropriate application before the Commission for its decision."

Judgement in Appeal Nos. 92 of 2016 & 93 of 2016

39. It is clear from above that recovery of income tax is to be done directly between the generating company and beneficiary and in case of dispute, beneficiaries can make appropriate application before the State Commission. Admittedly no such application was made by Appellants disputing the income tax claimed by PPCL for the period under consideration, but Appellants only expected that such true up of income tax for FY 2006-07 to FY 2011-12 would be taken up by the State Commission in the Impugned Order 2.

40. Our attention has not been drawn towards any adverse finding in Impugned Order 2 on the present issue with regard to the Appellants. Consequently, no case is made out for setting aside of the impugned order on this count. However, we note that both the Appellants and Respondent No. 2 have fairly expressed that the matter may be remanded to the State Commission for a limited determination of this issue. We find it just and proper to adopt such course. The issue is accordingly remanded to the State Commission to work out the liability of income tax of the Appellant, confined to Return on Equity with respect to PPCL for the period FY 2007-08 to FY 2011-12. In the event it is found that there has been any excess recovery by PPCL from the Appellant, the same to be directed to be refunded along with carrying cost in terms of the applicable Regulations.

CONCLUSION In view of above deliberations, we conclude our observation on issues contained in both the Appeals:

a) incorrect consideration of availability for GTPS & PPCL Impugned Orders dated 29.09.2015 in both the Appeals are upheld on this issue Judgement in Appeal Nos. 92 of 2016 & 93 of 2016

b) Non Refund Of Income Tax To Discoms (FY 2006-07 to FY 2011-12) There is no adverse finding in the Impugned Orders on the issue under consideration, therefore setting aside of the Impugned Orders on the issue is not necessitated. However, the issue is remanded to State Commission to work out the liability of income tax of the Appellant limited to Return on Equity with regard to IPGCL & PPCL for the period 2006-07 to FY 2011-12, and any over recovery by IPGCL & PPCL on Appellant to be refunded along with carrying cost as per applicable Regulations. For IPGCL, while

working out such liability, refund already accorded by IPGCL shall be taken into consideration. For deciding the issues in the Appeals, both Appellants as well as Respondent No 2 i.e. IPGCL & PPCL shall be provided opportunity to submit requisite details, as also required by the State Commission. The State Commission to expeditiously pass appropriate orders preferably within a period of three months from the date of receipt of this Order.

The Captioned Appeals and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 29th DAY OF MAY, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

REPORTABLE / NON-REPORTABLE
Pr/dk/ag/ak