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

\+ ITA 367/2025, CM APPL. 54359/2025, CM APPL. 37792/2026

AMERICAN EXPRESS BANKING CORP. (INDIA BRANCH)
.....Appellant

Through: Mr. Nageswar Rao & Mr. Ravi Lochan, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX .....Respondent

Through: Mr. Vipul Agrawal SSC with Ms. Sakshi Shairwal, Mr. Akshat Singh, JSCs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 23.07.2026

CM APPL. 46061/2026

1. Instant application has been filed under Section 151 of the Code of Civil Procedure, 1908 *inter alia* seeking permission to place on record additional documents (Annexure V) and stay on all subsequent steps.

2. The draft assessment order dated 29.06.2026 (Annexure V) is taken on record.

3. By way of our interim order dated 29.05.2026, we had allowed the Assessing Officer to pass draft assessment order, however while observing that the same shall not be given effect to.

4. An order has been passed on 29.06.2026. We hereby order that effect and operation of said order dated 29.06.2026 shall remain stayed.

5. Application stands disposed of, accordingly.

ITA 367/2025, CM APPL. 54359/2025 & CM APPL. 37792/2026

6. The appeal is admitted on the following questions of law:

a) Whether, on the facts and circumstances of the case and in law, the Tribunal has erred in sustaining the TPO's approach of substitution of transfer pricing methodology without an explicit rejection of appellant's transfer pricing contrary to the settled decisions of this Court?

b) Whether the Tribunal has erred in remanding the matter to TPO to re-examine the evidence filed almost a decade ago instead of finally deciding on validity or otherwise of transfer pricing adjustment?

c) Whether the Tribunal has incorrectly concluded that the issue involved in the present assessment year was similar to that in AY 2009-10, ignoring the stark difference in issues raised and approach adopted by TPO for AY 2009-10 (ITA 6253/Del/2017) and that no comparison was made in AY 2009-10 with any comparable company like Kotak Mahindra Banking Limited?

d) Whether the order of remand is unwarranted given that TPO's accepted comparable company viz., Kotak Mahindra Banking Limited has incurred losses during period of appeal while the Appellant's credit card business operated profitably meaning thereby that its payment towards services for credit card business pass the arm's length test?

e) Whether the Tribunal ought to have rejected the Transfer pricing adjustment as the same is based on Bright Line Test which is held to be invalid by this Court?

f) Whether Impugned Order is contrary to law so also decisions of Tribunal to the extent that it upholds rejection of foreign Associated enterprise as tested parties and rejects comparison with foreign *comparable companies on unsubstantiated assumptions?*

g) Whether in the absence of a prescribed methodology to benchmark transactions in question, the TPO's relianceon BLT (though labelled as CUP) renders the adjustment invalid due to absence of machinery provision?

h) Whether the Tribunal has erred by not excluding the services received from Indian entities from the transfer pricing adjustment pool, despite following the decision in AY 2009-10 where domestic transactions were explicitly excluded?

7. Issue notice. Mr. Vipul Agarwal, learned Senior Standing Counsel for the respondent accepts notice.

8. List this case on 29.10.2026.

DINESH MEHTA, J.

RAJNEESH KUMAR GUPTA, J.

JULY 23, 2026/*sid*