

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.1226 to 1229/Bang/2019  
(Assessment Year: 2013-14 to 2016-17)

M/s. Asian Fab Tec Limited,  
Plot No.15, 2<sup>nd</sup> Phase, Peenya Indl. Area,  
Bangalore-560058  
PAN AADCA7116R

....Appellant

Vs.

Dy. Commissioner of Income Tax,  
Central Circle 1(3), Bangalore.

.....Respondent.

Assessee By:	Shri Chythanya K K, Advocate.
Revenue By:	Ms. Neera Malhotra, CIT (D.R)

Date of Hearing :	28.01.2020
Date of Pronouncement :	05.02.2020

**ORDER**

**PER BENCH :**

These are the appeals filed by the assessee against the separate orders of Commissioner of Income Tax (Appeals), Bangalore passed under Section 153A r.w.s. 143(3) r.w.s. 153D and 250 of the Income Tax Act, 1961 ('the Act'). Since the assessee's appeals have a common and similar identical issue, they are clubbed

and heard together and consolidated order is passed. For the sake of convenience, we shall take up the ITA No.1226/Bang/2019.

2. The assessee is engaged in the business and manufacture, repair and reconditioning LPG Cylinders and supply and erection of electrical goods to various ESCOMs, buildings and developmental works and other allied activities. A search operations under Section 132 of the Act on the assessee was carried out on 7.1.2016 in connection with search proceedings of group M/s. Asia Fab Tec Limited and accordingly Notice under Section 153A of the Act was issued on 14.06.2016. The assessee has filed the Return of Income on 24.10.2016 declaring income of Rs.4,14,73,080. The assessee has filed the original return electronically before the due date under Section 139(1) of the Act on 30.11.2014 with the income of Rs.4,14,73,080 and there is no difference in the returned income for the return filed under Section 139(1) and 153A of the Act and subsequently Notices under Section 143(2) of the Act and 142(1) of the Act were issued. In response the learned A.R. appeared from time to time and submitted the details and the case was discussed. The Assessing Officer on perusal of the financial statements and Return of Income found that the assessee has claimed deduction under Section 80IA (iv) (b) of the Act of Rs.9,88,45,656. Whereas the Assessing Officer considering the facts and also the nature of works and upheld the provisions and disallowed the claim under Section 80IA observing that the assessee is not an

undertaking which is engaged in the business of transmitting and distribution of power and assessed the total income of Rs.14,03,18,736 and passed the order under Section 153A r.w.s. 143(3) r.w.s. 153D of the Act dt.29.12.2017. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals). The assessee has raised grounds on the disallowance and also jurisdictional issue and validity of assessment under Section 153A of the Act. The CIT(Appeals) considered the assessee's submissions and findings of the Assessing Officer has confirmed the disallowance and dismissed the assessee's appeal. Aggrieved by the order of CIT(Appeals), the assessee has filed an appeal with the Tribunal.

3. At the time of hearing, the learned Authorised Representative submitted that the CIT(Appeals) has erred in confirming the order of Assessing Officer and also CIT(Appeals) has failed to adjudicate the ground on the jurisdictional issue by Id. A.O. under Section 153A of the Act by disallowing the claim under Section 80IA(iv)(4) of the Act in the absence of any incriminating material. The learned Authorised Representative has restricted his arguments to the extent of non-adjudication of jurisdictional issue by the CIT(Appeals) and prayed for allowing the appeals. The learned Authorised Representative further submitted that the assessee has raised Ground of appeal No.2.2 before the CIT(Appeals) which was not adjudicated as under :

*“2.2 Without prejudice to the above, the ld. Assessing Officer has failed to appreciate that in the absence of any incriminating materials seized during the search, any assessment made under Section 153A disallowing the claim of deduction under Section 80IA(4)(iv) is bad in law.”*

Contra, the learned Departmental Representative supported the orders of CIT(Appeals).

4. We heard the rival contentions and perused the material on record. Prima facie, the learned Authorised Representative has made submissions that the CIT(Appeals) has not adjudicated the ground of appeal on jurisdictional issue where there is no incriminating material seized during the search and therefore claim of deduction under Section 80IA (4)(iv) is bad in law and also submitting the Paper Book to support his submissions. We found strength in the submissions of learned Authorised Representative and on perusal of the CIT(Appeals) order, there is no adjudication or findings by the CIT(Appeals) on the Ground of appeal No.2.2 as referred in the above paragraph raised by the assessee before the CIT(Appeals). Therefore considering the principles of natural justice, we set aside the order of CIT(Appeals) and restore the disputed issue to the file of CIT(Appeals) to adjudicate the legal ground on the jurisdiction of the Assessing Officer first in assessment made under Section 153A of the Act where no incriminating material was seized as claimed by the assessee. If the assessee does not succeed, the CIT(Appeals) shall pass the order on merits with speaking order on merits with

findings. Accordingly, the grounds of appeal of the assessee are allowed for statistical purposes.

5. Similarly, in ITA Nos.1227 & 1228/Bang/2019 for the Assessment Years 2014-15 & 2015-16 respectively, the issues are identical in respect of jurisdiction of the Assessing Officer in passing the assessment order under Section 153A of the Act where no incriminating material was seized. We have dealt this issue in assessee's own case in ITA No.1226/Bang/2019 for the Assessment Year 2013-14 and the same decision shall apply. Accordingly, these appeals are also restored to the file of CIT(Appeals) with similar directions and allow the grounds of appeal of assessee.

6. The assessee has also filed appeal in ITA No.1229/Bang/2019 for the Assessment Year 2016-17 where the addition on merits has a binding effect considering the earlier assessment year order therefore we consider it appropriate to restore this issue also to the file of CIT(Appeals) to adjudicate based on the above decision for early assessment years. This appeal also restored to the file of CIT(Appeals) and allow the grounds of appeal of assessee for statistical purposes.

7. In the result, the appeals of assessee are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 05.02.2020.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore