

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

<b>ITA Nos. 1023 to 1025/Bang/2025</b>
<b>Assessment Years : 2018-19, 2019-20 &amp; 2021-22</b>

The Assistant Commissioner of Income Tax, Central Circle – 2(4), Bangalore.	<b>Vs.</b>	M/s. Atria Wind (Kadambur) Pvt. Ltd., No. 11, 1 <sup>st</sup> Floor, Commissariat Road, Ashok Nagar, Bangalore – 560 025. <b>PAN: AAPCA4799J</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Ms. Sunaina Bhatia, CA
Revenue by	:	Shri Shivanand Kalakeri, CIT-DR

Date of Hearing	:	14-07-2025
Date of Pronouncement	:	08-10-2025

**ORDER**

**PER BENCH**

These are three appeals filed by the Revenue challenging the separate orders of the Ld.CIT(A)-15, Bengaluru dated 21/02/2025, 24/02/2025 and 26/02/2025 in respect of the A.Ys. 2018-19, 2019-20 and 2021-22 respectively.

**2.** We are taking up all the three appeals together for the sake of convenience since the issue involved are common in all the appeals and the counsel for the assesseees are also one and the same. We will take up the

appeal in ITA No. 1023/Bang/2025 for A.Y. 2018-19 as the lead case and therefore the grounds raised in the said appeal has been extracted and the decision arrived in the said appeal shall apply mutatis mutandis to the other two appeals in ITA Nos. 1024 & 1025/Bang/2025.

Grounds raised by assessee in ITA No. 1023/Bang/2025

*“1. Whether on the facts of the circumstances of the case, the ld. CIT(A) has erred in deleting the disallowance of Rs. 12,73,22,623/- made by the AO u/s 80IA of the Act.*

*2. Whether on the facts and circumstances of the case, the ld. CIT(A) has erred in holding that the various materials pointed out in the impugned assessment order cannot be regarded as incriminating materials and no addition can be made on the basis of these documents in the assessment u/s 153A of the Act.*

*3. Whether on the facts and circumstances of the case, the ld. CIT(A) has erred in deleting the disallowance made u/s 80IA of the Act by holding that the assessment in the instant case is not an abated assessment and that the order passed u/s 153A of the Act is beyond the scope of the present proceeding.*

*4. Any other grounds which may urged at the time of hearing.”*

**3.** The brief facts of the case are that the assessee is a company engaged in generation and sale of electrical power generation, transmission and distribution. The assessee filed their return of income on 23/10/2018. Thereafter a search was conducted on 17/12/2020 and the authorities had alleged that some incriminating documents were found and seized. Thereafter a survey was also conducted. Thereafter, notice u/s. 153A was issued for which the assessee filed their return of income. During the course of assessment, several details were called for and the assessee also filed the submissions. In the assessment years, the assessee had claimed a deduction u/s. 80IA of the Act and claimed the set off of brought forward loses. The AO disallowed the deduction claimed u/s 80 IA and disallowed the set off of brought forward loss of Rs. 2,83,86,494/-. The AO based on the search conducted and the seizure of the documents and also based on

the allegation that the assessee had violated of the provisions of section 47(xiii) of the Act, made the disallowance. As against the said order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) allowed the claim in respect of the disallowance u/s. 80IA of the Act whereas remitted the disallowances of set off of brought forward loss for verifying the supporting documents and details to be filed by the assessee and thereafter allow the set off of brought forward losses.

**4.** As against the said order, the revenue is in appeal before this Tribunal.

**5.** At the time of hearing, the Ld.DR submitted that the Ld.CIT(A) had erred in coming to the conclusion that there are no incriminating materials and therefore no addition could be made on the basis of the seized documents. Further, the Ld.DR submitted that the Ld.CIT(A) had also erred in deleting the disallowance made u/s. 80IA of the Act on the ground that the assessment is not an abated assessment and that the order passed u/s. 153A is beyond the scope of the present proceedings.

**6.** The Ld.AR submitted that based on the search conducted on 17/12/2020, the assessments were reopened and the disallowance u/s. 80IA as well as the disallowance of set off of brought forward losses were made. The Ld.AR further submitted that the AO had relied on the seized materials as incriminating materials and based on that, the AO had arrived a conclusion that the assessee had violated section 47(xiii) of the Act and therefore denied the deduction and the set off of the brought forward losses. The Ld.AR submitted that this finding of the AO is not correct in view of the order passed by this Tribunal in ITA No. 692/Bang/2024 dated 15/10/2024 in respect of the assessee's own case for the A.Y. 2017-18. The Ld AR submitted that the Tribunal had not accepted the case of the AO and allowed the appeal of the assessee and therefore the present order of the AO also not in accordance with the earlier order of this Tribunal. The Ld.AR

further submitted that the Ld.CIT(A) had relied on the said order and granted the relief and therefore requires no interference.

**7.** We have heard the arguments of both sides and perused the materials available on record.

**8.** From the assessment order, we find that there was a search operation conducted on 17/12/2020 and at that time, some alleged incriminating documents were found and seized by the department. Based on the said incriminating documents, the AO had come to the conclusion that the assessee company was formed by splitting up or reconstruction of a business already in existence and thereby violating the provisions of section 47(xiii) of the Act. On that score, the AO had denied the deduction claimed u/s. 80IA of the Act. Similarly, the set off of brought forward losses was also denied by the AO.

**9.** Based on the search conducted on 17/12/2020, assessments were also made in respect of the A.Y. 2017-18, by treating the seized materials as incriminating materials and also the assessee had violated the conditions mentioned in section 47(xiii) of the Act and thereby computed the capital gains during the said assessment year. The said assessment order was challenged by the assessee before the Tribunal and the Tribunal in its order dated 15/10/2024, after elaborately discussed the issue, had arrived a conclusion that the documents seized are not incriminating in nature and also held that the assessee had not violated section 47(xiii) of the Act and thereby set aside the capital gains arrived by the AO. The Tribunal in its order in para nos. 5.4 and 5.13 had given the following findings:

*“5.4 We have gone through the alleged incriminating documents seized at the time of search and we found that at no stretch of imagination, the above said documents could be treated as incriminating records because they are only the documents maintained by the assessee during the normal course of business like Board Resolution, note prepared by the Advocate and the valuation report prepared by the advocate and the indenture of retirement-*

*cum-release of partnership firm dated 06.07.2015 and financial statements for the assessment year 2015-16. From the above said documents we are not able to find any incriminating evidence for the suppression of income. We therefore, does not accept the reasoning of the AO that these are all incriminating records recovered at the time of search from the assessee. Further, there is no suppression or escaped income made out by the AO, based on the seizure of the above said incriminating documents and therefore we are of the view that no assessment proceedings could be initiated u/s 153A of the Act when the assessment was completed. To arrive such a conclusion we relied on the judgement of the Hon'ble Supreme Court reported in 454 ITR page212 in the case of Abhisar Buildwell P Ltd."*

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*5.13 In the present case, there are no violation of the conditions laid down in section 47(xiii) proviso (a) or (c) of the Act and therefore, the order of the AO treating the value of the assets and liabilities of the firm, as capital gain obtained by way of transfer of capital asset liable to be taxed under the head long term capital gains u/s 45(4) of the Act is not sustainable. In coming to the above conclusion, we derive assistance from the judgement of the Hon'ble Madras High Court dated 01.12.2015 in T.C (A) No.2619 of 2006 in the case of M/S CADD Centre Vs ACIT."*

**10.** From the said order of the Tribunal, it is clear that there are no incriminating materials seized by the department and also no violation has been committed by the assessee. In such circumstances only, the Ld.CIT(A) had relied on the Tribunal order and allowed the appeal by giving the following findings:

*".....It can be seen that the Hon'ble ITAT has very categorically held that the basis for the denial of exemption u/s.801A of the Act which is that there was violation of conditions of section 47(xiii) of the Act is not correct.*

*6.6 Respectfully following the decision taken by the Hon'ble ITAT, it is held that. the decision in ITA No.692/Bang/2024 dated 15.10.2024 for the AY 2017-18 shall apply mutatis mutandis to this appeal has it deals with identical issues, accordingly, grounds of appeal*

*raised by the appellant for the relevant AY on these grounds of appeal are allowed. Consequent to the tribunal decision, considering the totality of facts and circumstances of the case, the additions made by the AO in the impugned order for the relevant AY is not sustainable and are therefore deleted. Accordingly, the grounds of appeal no.4 (4.1 to 4.3) filed by the appellant are allowed.”*

**11.** The revenue had not produced any other documents to take a different view except alleging that there are incriminating materials. We are therefore not accepting the case of the revenue in the given facts and circumstances of the case. We, therefore dismiss all the appeals filed by the revenue.

**12.** In the result, all the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 08<sup>th</sup> October, 2025.

Sd/-  
(WASEEM AHMED)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 08<sup>th</sup> October, 2025.  
/MS /

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore