

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:319/Chny/2025

निर्धारण वर्ष / **Assessment Year: 2008-09**

<b>Vestas Wind Technology India Private Limited,</b> Tower 1, 9 <sup>th</sup> Floor, Radial IT Park, Survey No.141/14a 200 Feet Radial Road, Zamin Pallavaram, Chennai – 600 117.	vs.	<b>JCIT,</b> Company Range - III, Chennai.
<b>[PAN:AAACA-9274-F]</b> (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. Sriram Seshadri, C.A.

प्रत्यर्थी की ओर से/Respondent by : Shri. A R V Srinivasan, CIT  
for Shri. Bipin C.N., CIT

सुनवाई की तारीख/Date of Hearing : 02.12.2025

घोषणा की तारीख/Date of Pronouncement : 22.12.2025

**आदेश / O R D E R**

**PER S. R. RAGHUNATHA, AM :**

The present appeal is filed by the assessee against the order dated 27.11.2024 passed by the learned Commissioner of Income Tax, Appeal, CIT(A), Chennai – 16 (hereinafter referred to as "Id.CIT(A)"), dismissing the appeal filed by the assessee against the assessment order dated 30.12.2011 passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), pertaining to Assessment Year (A.Y.) 2008-09.

2. The brief facts of the case leading to the present appeal are as follows. The assessee is engaged in the business of manufacture and service of wind turbine generators, trade of wind turbine components and sale of service spares. For the assessment year under appeal, the assessee filed its return of income declaring a total income of Rs.195,58,47,022/-. The assessee's return of income was selected for scrutiny and Assessing Officer passed the assessment order by making an addition of Rs.25,60,69,650/- towards understatement of sales made to domestic related parties and disallowance of license fee to the tune of Rs.10,13,00,000/-.

3. Aggrieved, the assessee preferred an appeal before the Id.CIT(A) who sustained the addition of Rs.25,60,69,650/-, while deleting the disallowance of Rs.10,13,00,000/-.

4. Aggrieved by the Id.CIT(A)'s order, the assessee has filed the present appeal before us.

5. The case of the Assessing Officer is that the assessee has sold the Wind Turbine Generators (hereinafter referred to as WTG) to the subsidiary companies, i.e., Surajbari and Maharashtra Revangaon, at a price lower than the price at which the WTGs were sold to the unrelated customers. The Assessing Officer observed that the total sale consideration for the 15 WTGs sold to the subsidiary companies amounted to Rs.134.72 Crores. He further noted that the maximum price at which a WTG is sold to the 3rd party customers is Rs.10.96 Crores and the minimum price was Rs.10.41 Crores, thereby working out an average sale price of Rs.10.68 Crores per WTG. On this basis, the Assessing Officer computed that the total sales value for 15 WTGs, if sold at the said average price, would amount to Rs.160.34 Crores, as against the actual sale value of Rs.134.72 Crores. Accordingly, the Assessing Officer treated the difference of Rs.25.60 Crores [i.e., Rs.160.34 Crores – Rs.134.72 Crores] as understatement of sale consideration and added the same to the

assessee's total income on the ground that the assessee had failed to substantiate the reason for the price differential between the sales made to the subsidiary companies and those made to the 3rd party customers. The Ld.CIT(A) sustained the addition made by the Assessing Officer.

6. Before us, the Id.AR contended that impugned adjustment made by the Assessing Officer is wholly without jurisdiction and is not supported by any of the provisions of the Act; there exists no section under the Act which empowers the Assessing Officer to disregard the actual consideration received from a sale transaction and substitute it with a notional price of his own. The only analogous provision on the expenditure side is Section 40A(2) of the Act, which empowers the disallowance of expenditure considered excessive or unreasonable having regard to the fair market value. However, that provision is explicitly limited to the expenditure. The present case concerns sales made by the assessee. Thus, even the provisions of Section 40A(2) of the Act has no application whatsoever.

7. It was further submitted by Id.AR that the domestic transfer pricing provisions under Chapter X of the Act are also inapplicable to the facts of the present case. For the relevant assessment year (i.e., AY 2008-09), transfer pricing provisions were confined only to international transactions. There was no legislative framework to apply transfer pricing principles to domestic transactions. It was only with effect from AY 2013-14 that the legislature, through the insertion of Section 92BA of the Act, introduced the concept of "specified domestic transactions". Even then, the scope of Section 92BA of the Act was narrowly circumscribed, applying only in cases where deduction under Section 80-IA(8) or Section 10AA of the Act, and other similar provisions were being claimed. The present transaction would still not fall within the scope of Section 92BA of the Act, as it is a case of plain sale of goods with no claim for deduction under any of the provisions (i.e., deduction under section 80-IA(8) or 10AA of the Act etc.) referred to in Section 92BA of the Act.

8. The Id.AR further submitted that only real income could be taxed and not hypothetical or notional amounts. Since the impugned addition represents a purely notional figure that neither accrued to nor was received by the assessee, it cannot be brought to tax under the Act. In support of his arguments, the reliance was placed on the judgment rendered by the Hon'ble Supreme Court in the case of CIT v Calcutta Discount Co. Ltd – [1973] 91 ITR 8 (SC), where this proposition was upheld by the Hon'ble Supreme Court. It was further submitted the pricing adopted by the assessee is based on a commercial rationale and established trade practices and the Revenue has not brought any material on record to show that the assessee has received any consideration from the subsidiary companies beyond the invoice values and hence the impugned addition warrants deletion. Reliance was placed on the judgment rendered by the Hon'ble Supreme Court in the case of K.P.Varghese v. Income Tax Officer – [1981] 131 ITR 597 (SC), where this proposition was upheld by the Hon'ble Supreme Court.

9. Per contra, the Id.DR relied on the orders of the authorities below and contended that the assessee had understated its sales, which has resulted in reduced taxable profits and prayed that the appeal may be dismissed.

10. We have heard the rival contentions of both the parties, perused the orders of the authorities below, paper book and case law book filed by the assessee.

11. We find force in the arguments made by the assessee. As rightly pointed out by the Id.AR of the assessee, neither section 40A(2) of the Act nor section 92BA of the Act is applicable in the present case. we note that the AO has not specified any provision of the Act under which the impugned addition of ₹25.60 crores has been made. It is an admitted position that Section 40A(2) applies only to expenditure and has no application to sales. Further, for A.Y.2008-09, domestic transfer pricing provisions did not exist. Section 92BA was introduced only from AY 2013-14 and is not applicable to the facts of the present case. In

the absence of any specific statutory provision, the AO could not have substituted the actual sale consideration with a notional market value. Therefore, we are of the considered view that the additions made on account of understatement of sales value cannot be sustained.

12. Further, it is a trite law that only real income could be taxed, and notional income cannot be taxed. The Hon'ble Supreme Court in CIT v. Calcutta Discount Co. Ltd. (supra) has categorically held that unless the Revenue establishes, on the basis of cogent material, that the assessee has actually earned more than what is disclosed, fictional or notional income cannot be brought to tax. Similarly, it was also held in the very same judgment that in the absence of any evidence to show either the sales were sham transactions or that the market prices were in fact paid by the purchasers, the mere fact that the goods were sold at a concessional rate to benefit the purchasers at the expense of the company would not entitle the income tax department to assess the difference between the market price and the price paid by the purchasers, as profits of the company.

13. Similarly, in K.P. Varghese v. ITO (supra), the Hon'ble Supreme Court held that the burden is on the Revenue to prove that consideration over and above what is recorded has passed between the parties.

14. In the present case, there is **no evidence whatsoever** to indicate that the assessee received any consideration over and above the invoiced amount. Mere comparison with third-party prices, without statutory backing, cannot justify an addition.

15. We also find that the Id.CIT(A) concurring with the arguments of the assessee that neither section 40A(2) of the Act nor section 80IA of the Act could be pressed into service for the year in question and since there are no specific provisions available to tax the transaction, general provisions shall apply. However, we fail to fathom what that general provision is, which gives the

Assessing Officer the power to tax the impugned transaction. In the absence of either general or specific provision, the power to tax a transaction is void. In taxation law, there can be no levy without authority of law.

16. In view of the above discussion, we are set aside the order of the Id.CIT(A) and we delete the addition made by the AO on account of understatement of sales made to the related parties by allowing the corresponding grounds raised by the assessee.

17. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22<sup>nd</sup> December, 2025 at Chennai.

**Sd/-**

(एबी टी वर्की )

**(ABY T VARKEY)**

न्यायिक सदस्य/Judicial Member

**Sd/-**

(एस. आर. रघुनाथा)

**(S. R. RAGHUNATHA)**

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 22<sup>nd</sup> December, 2025

**SP**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF