

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**I.T.A. No. 3840/Mum/2025
A.Y: 2018-19**

Vaayu (India) Power Corporation Pvt Ltd., Plot No. a49, Enercon Tower, Veera Desai Road, Andheri (W), Mumbai - 40053 PAN – AADCV1218M (Appellant)	Vs	DCIT, Circle – 3(3)(1) Aayakar Bhawan, Mumbai. (Respondent)
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Assessee by	Ms. Simran Dhavan
Revenue by	Shri Vivek Permpurna, CIT DR

Date of Hearing	06.01.2026
Date of Pronouncement	07.01.2026

ORDER

Per: SHRI. SANDEEP GOSAIN, J.M.:

The present appeal has been filed by the assessee challenging the impugned order dt. 31.03.2025 passed under section 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2018-19. The assessee has raised the following rolls of appeal.

1. *On the facts and in the circumstances of the appellant company's case and in law, the Ld. Commissioner of Income Tax (Appeals) through National Faceless Appeal Centre (NFAC) erred in passing an ex-parte order u/s 250 of the Income Tax Act, 1961 on 31.03.2025 without affording sufficient*

opportunities to the appellant to prepare for the matter and file the submissions before the Ld. CIT(A).

2. On the facts and in the circumstances of the appellant company's case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the disallowance of professional fee expense of Rs 35,09,032/- ignoring the fact that the discrepancy between Form 26AS and the total professional fees expense claimed by the appellant company amounting to Rs. 35,09,032/- was due to the fact that TDS was deducted but not paid to the credit of the Central Government prior to the date of filing return of income which has already been suo-moto disallowed @ 30% by the appellant company under clause 21(b)(ii)(b) of the Tax Audit Report in Form 3CA-CD e-filed by the appellant company on 27.07.2018 vide e-filing acknowledgment number 941999731270718 thereby resulting in double addition in the hands of the appellant company.

3. On the facts and in the circumstances of the appellant company's case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the disallowance of professional fee expense of Rs 35,09,032/- made by the Assessing Officer disregarding the submissions filed by the appellant company during the course of assessment proceedings.

4. The appellant craves leave to add to, alter, amend, modify and/or delete all or any of the foregoing grounds of appeal.

The appellant prays before the Hon'ble Tribunal to delete the impugned disallowance made by the Assessing Officer and confirmed by the Ld. CIT (A) and/or any other relief as the Hon'ble Tribunal may deem fit.

2. As per the facts of the present case, AO noticed discrepancy, when the payment received by the different parties in lieu of professional / technical services from the assessee company were matched with Form 26AS. Therefore aggregate difference of Rs. 35,09,032/- were disallowed and consequently additions were made which were also upheld by Ld. CIT(A).

3. Ld. AR submitted that Ld. CIT(A) erred in passing ex-parte order without affording sufficient opportunities and had decided the case without considering the documents placed on record and the statement of facts filed before Ld. CIT(A).

4. After having heard the counsels for both the parties, we noticed that even in the order of assessment it has specifically been mentioned that assessee had not filed any explanation or documents to substantiate their claim.

5. Whereas on the contrary Ld.AR drawn our attention to paper book page No. 140 to 143 which carries details of amount of TDS unpaid as per tax audit report. Since all these documents / submissions were not examined by the AO or Ld. CIT(A) while passing their orders.

6. Be that as it may, considering the facts of the case as discussed above we restore the matter back to the file of Ld. CIT(A) for denovo adjudication of the appeal afresh. Needless to mention after providing opportunity of hearing to the assessee subject to cost of Rs. 2,000/- as the assessee had failed to participate and assist the revenue authorities. The said amount shall be deposited by the assessee in the Prime Minister's Relief Fund and a copy of the receipt shall be placed on file before Ld. CIT(A) within 30 days from the date of receipt of this order. The assessee shall not seek any adjournment on frivolous

grounds and shall remain cooperative during the course of proceedings.

7. Before parting, we make it clear that our decision to restore the matter back to the file of the Ld. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute which shall be adjudicated by the Ld. CIT(A) independently in accordance with law.

8. In the result the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 07/01/2026

Sd/-
BIJAYANANDA PRUSETH
(ACCOUNTANT MEMBER)

Sd/-
(SANDEEP GOSAIN)
(JUDICIAL MEMBER)

Mumbai:
Dated:07/01/2026

KRK, Sr. PS.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai