



CNR: KAHC010542172026

NC: 2026:KHC:49082-DB
ITA No. 139 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

INCOME TAX APPEAL NO.139 OF 2026

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME-TAX,
CENTRAL,
3RD FLOOR, C.R. BUILDING,
QUEEN'S ROAD, BENGALURU - 560 001.
 2. THE ASSISTANT COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE-2(4),
3RD FLOOR, C.R. BUILDING,
QUEEN'S ROAD,
BENGALURU-560 001.
- ...APPELLANTS

(BY SRI. RAVI RAJ Y.V., ADVOCATE)

AND:

M/S. ATRIA WIND (KADAMBUR) PVT. LTD.,
NO.11, 1ST FLOOR,
COMMISSARIAT ROAD, ASHOK NAGAR,
BANGALORE-560 025.

...RESPONDENT

THIS ITA IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE; ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU IN ITA NO.1023/BANG/2025 DATED 08.10.2025 FOR ASSESSMENT YEAR 2018-19 ANNEXURE-A CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(4), BENGALURU.



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THIS APPEAL, COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. For the reasons stated in the application-I.A.No.1/2026, the same is allowed. The delay of 31 days in filing the appeal is condoned.
2. The department [the appellant] has filed the appeal under Section 260A of the Income Tax Act, 1961 [**the Act**] impugning the order dated 08.10.2025 passed by the Income Tax Appellate Tribunal, Bengaluru [**the ITAT**] in I.T.A.No.1023/Bang/2025 for the Assessment Year [**AY**] 2018-19. The department had filed the said appeal impugning the order dated 19.02.2025 passed by the Commissioner of Income Tax (Appeals)-15, Bengaluru [**the CIT(A)**] in CIT(A) No.11/BNG/10755/2017-18. The respondent [**the Assessee**] had filed the said appeal impugning the Assessment Order dated 30.03.2022 passed by the Assessing Officer [**the AO**] under Section 143(3) read with Section 153A of the Act.



3. In the given facts, the department has projected the following substantial questions of law:

"1. Whether under the facts and circumstances of the case and in law, the Tribunal was right in holding that documents such as Board Resolutions, legal notes, and valuation reports seized u/s 132 do not constitute "incriminating material" when such evidence was neither disclosed during regular assessment nor available on record prior to the search?

2. Whether under the facts and circumstances of the case and in law, the Tribunal was right in interpreting Section 47(xiii) by failing to appreciate the modus operandi adopted by the assessee and the direct nexus between the earning of capital, the withdrawal of capital by partners through an unregistered deed, and the subsequent conversion?

3. Whether under the facts and circumstances of the case and in law, the Tribunal is right in ignoring the sequence of events which clearly established a violation of the conditions prescribed under the proviso to Section 47(xiii) and as such the findings of the Tribunal perverse?"

4. The Assessee, M/s Atria Wind (Kadambur) Pvt. Ltd., was formed by succession from the firm, M/s Perpetual Investments [the Firm] and is engaged in the business of generation and sale of electrical power. The Assessee owns a wind power project having a capacity of 50 megawatt capacity in the State of Tamilnadu.

5. The Assessee filed its return of income under Section 139 of the Act on 23.10.2018 for the AY 2018-2019. The same was



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processed under Section 143(1) of the Act on 17.05.2019. Subsequently, a search under Section 132 of the Act was conducted at the office premises of the Assessee on 17.12.2020. Pursuant to the said search, the AO issued notice under Section 153A of the Act on 28.09.2021, calling upon the Assessee to file its return of income. The Assessee filed its return on 29.10.2021, declaring nil income. However, the Assessee did not e-verify the return of income. The AO, by order dated 30.03.2022 passed under Section 153A read with Section 143(3) of the Act, assessed the total income at ₹14,99,89,081/-.

6. In the said proceedings, the AO disallowed the deduction claimed under Section 80-IA of the Act. The AO found that the Firm had been converted into a company by way succession. However, prior to the succession, M/s Perpetual Investments had sold one of its assets [shares held in Atria Convergence Technologies (ACT)] on 06.05.2016 for a total consideration of ₹394,94,99,14,233/- to two Mauritius based companies, namely, M/s Argan (Mauritius) Limited and M/s TA FVCI Investors Limited.



7. The AO also found that the constitution of the Firm remained the same for most of the assessment years till the date of 31.12.2016. However, the capital sharing ratio was materially changed on 01.01.2017. The individual partners withdrew their capital and reduced their share in the Firm to 1%. The share of one of the constituent partners, Atria Wind Power Private Limited increased to 94%.

8. The AO was of the view that the proviso (c) to Section 47(xiii) of the Act was attracted, therefore, the conversion of the Firm to the Assessee would constitute a transfer within the meaning of Section 47 of the Act. On the basis of the said reasoning, the AO proceeded to hold the benefit of Section 80-IA of the Act would not be available to be Assessee.

9. The Assessee preferred an appeal against said order before the learned CIT(A). On merits, the learned CIT(A) rejected the AO's finding that Section 47(xiii) of the Act was inapplicable. The department appealed the CIT(A)'s decision to the learned ITAT. The learned ITAT upheld the CIT(A)'s view observing as under:



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"5.5 Next, we will consider the issue on merits, whether the assessee had committed any violation of the provisos to Section 47 (xiii) of the Act as alleged by the AO. We will go through the reasons stated by the AO for levying long term capital gains tax on the transfer of the firm's capital asset to the assessee as a result of succession of the firm by the company in the business carried on by the firm, when the assessee had not violated any of the conditions mentioned in the provisos to section 47(xiii) of the Act. The AO initially issued a show cause notice, proposing to add the long-term capital gains for the reason that the assessee had violated section 47(xiii) proviso (a) & (c) of the Act. Subsequently the assessee filed their detailed objections and demonstrated before the AO that none of the provisos were violated by them while transferring the firm into a company and therefore, claimed that the addition made under the head long term capital gains is not warranted. For the purpose of clarity, we are reproducing the objections filed by the assessee which is as follows:..

....5.6 We have gone through the above detailed reply filed by the assessee and from that we are able to see that the succession was taken into effect from 27.03.2017 and all the assets and liabilities of the firm relating to the business of the firm immediately before the succession i.e on 26.03.2017 becomes the assets and liabilities of the assessee company. The assessee had enclosed the copy of the audited financial statements of the firm for the period up to 26.03.2017 at page numbers 71 to 85 in support of their contention. Similarly, the assessee also filed the summary of assets and liabilities of the firm as on 26.03.2017 in page 86 of the paper book. Even though the assessee filed number of documents, we are relying on the following documents in order to appreciate the facts.

- a) Copy of the ITR V and IT Return of the firm for the assessment year 2016-17.
- b) Copy of the Partnership Deed dated 31.01.2008 and the Indenture of Reconstitution of partnership at 10.04.2015 and the copy of the Reconstitution of partnership dated 16.01.2017.
- c) Copy of the stamped affidavit for dissolution of firm.



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5.7 In order to appreciate the explanation offered by the assessee, we have gone through the proviso (a) to section 47(xiii) of the Act in which the words used are that "immediately before the succession", which means that the assets and liabilities of the firm immediately before the date of succession would become the assets and liabilities of the company. In this case, the succession was taken into effect from 27.03.2017 and therefore all the assets and liabilities of the firm stood immediately before the date of succession i.e as on 26.03.2017 vests with the company. The meaning of the word immediately as given in the Black's Law Dictionary is as follows;

"without interval of time, without delay, straight away".

10. It is apparent from the above that the learned ITAT has recorded a finding of fact to the effect that the assets and liability of the Firm as on 26.03.2017, immediately before its succession by the Assessee, became the assets and liabilities of the Assessee. It is not disputed that there was no change in the assets and liabilities of the firm immediately prior to the succession and those of the company post-succession.

11. It is relevant to refer to proviso (a) and (c) to Section 47(xiii) of the Act, which are reproduced below:

"47. Nothing contained in section 45 shall apply to the following transfers:

[(xiii) any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any



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transfer of a capital asset to a company in the course of [demutualisation or] corporatisation of a recognised stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company:]

Provided that-

(a) all the assets and liabilities of the firm [or of the association of persons or body of individuals] relating to the business immediately before the succession become the assets and liabilities of the company;

(b) xxx;

(c) the partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and"

12. There is no allegation that the constituent partners of the Firm had received any consideration or benefit, directly or indirectly, in any form or manner other than by way of allotment of shares on the conversion to the Assesee company. It is not disputed that the partners were allotted shares in lieu of their shares in the Firm as held by them immediately preceding the succession. There was no embargo or restriction on the partners withdrawing any fund from the firm prior to its succession and any transaction done prior to succession does not render the succession as a transfer within the meaning of proviso (a) and (c) of Section 47(xiii) of the Act.



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13. The learned ITAT's finding of fact that the assets and liabilities of the Firm as on 26.03.2017, immediately prior to its succession, were transferred to Assessee cannot be assailed as perverse.

14. The CIT(A) also found that no incriminating material had been found during the search. We note that documents such as the Board Resolution, NOCs issued by M/s Perpetual Investments for conversion of the firm into a company, a note prepared by the solicitors regarding sale of equity shares and depreciation, the valuation report prepared in respect of fixed and documents relating to the legal constitution of the Firm prior to its succession to the Assessee, could not be considered as incriminating documents.

15. The learned ITAT also found that there were no incriminating materials found during the search. Following the decision of the Supreme Court in **Principal Commissioner of Income Tax V. Abhisar Buildwell Pvt. Ltd.**¹, the proceedings under Section 153A of the Act were held to be not maintainable.

¹ 2023 SCC OnLine SC 481



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16. A plain reading of the documents indicates that there is no dispute that the Firm was succeeded by the Assessee. The valuation reports, legal notes and Board Resolutions are all documents relating to and arising in the natural course of the Assessee's activities. Insofar as the question whether the succession into a company was within the scope of Section 47(xiii) of the Act is concerned, the same is premised on a factual finding that there was no alteration of the assets and liabilities of the Firm on account of the Assessee succeeding to the said assets and liabilities. The fact that, prior to such succession, the Firm had sold certain assets and the shares of the partners were changed does not affect the applicability of provisions of Section 47(xiii) of the Act.

17. No substantial question of law arises in this appeal.

18. The appeal is accordingly dismissed.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**