

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

**BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2272/BANG/2018
Assessment Year : 2013 - 14

M/s Samrudhi Developers, #29, 2 nd Floor, 1 st Main, 3 rd Stage, 3 rd Block, Basaveswaranagar, Bengaluru-560 079. PAN - ABUFS 5031 J	Vs.	The Asst. Commissioner of Income-tax, Circle-6(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri V Srinivasan, Advocate
Respondent by	:	Shri Kannan Narayanan, JCIT

Date of Hearing	:	08-07-2021
Date of Pronouncement	:	23-07-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 20/06/2018 passed by the Ld.CIT(A)-6, Bangalore for assessment year 2013-14 on following grounds of appeal:

1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.
2. The learned CIT[A] is not justified in upholding the disallowance of Rs. 1,41,03,750/- u/s 40A[3] of the Act in respect of the payments made by the appellant as the agent of housing society for purchase of lands on which residential sites were to be formed for the members of the housing society and thus, these payments made were covered under the exception provided under Rule 6DD[k] of the I.T.Rules, under the facts and in the circumstances of the appellant's case.
3. The learned CIT[A] further failed to appreciate that the appellant had made the cash payments for purchase of lands at the insistence of the Vendors who were all agriculturist and some of whom did not even have bank accounts and thus, these payments made by the appellant were under exceptional circumstances that exempted the application of the provisions of section 40A[3] of the Act under the facts and in the circumstances of the appellant's.
4. The learned CIT[A] ought to have appreciated that the provisions of section 40A[3] of the Act, were not applicable to the facts of the appellant's case and ought to have been deleted the impugned disallowance made.
5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-B, 234-C and 234-D of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.
6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

Brief facts of the case are as under:

2. The assessee is a firm having income from business. It filed its return of income on 28/09/2013 declaring total income of Rs.3,47,10,000/-. The return was processed under section 143(1) of the Act and the case was selected for scrutiny. Notice under section 143(2) of the Act was issued to assessee, in response to which representative of assessee appeared before the Ld.AO and called requisite details.

2.1 During the course of assessment proceedings, the Ld.AO observed that assessee debited sum of Rs.4,38,21,784/- to the P&L account by way of purchase of land. The Ld.AO treated the land purchased as stock in trade and the cash purchases incurred amounting to Rs.1,41,03,750/- as not allowable under section 40(A)(3) of the Act. The Ld.AO observed that, the payments were made in the name of Laughter Yoga International Foundation, and not in the name of the vendors.

2.2 The Ld.AO called upon assessee to explain why the cash payment and checked payment made in the name of Laughter Yoga Foundation should not be disallowed. In response the assessee submitted that, it acted as agents of Society for acquisition of land and the amounts paid by the society were used to defray the expenses in connection with the purchase of land and ultimately the profit that is derived by assessee is nothing but commission for agency. The assessee submitted that instead of reflecting the income alone, they resorted to show the gross receipts and expenses relating to the project in the profit and loss account.

2.3 The Ld.AO after going through the MOU entered between the assessee and society, came to the conclusion that assessee is not acting as agent of assessee, purchased the land and sold it to the assessee. He thus made addition in the hands of assessee under section 40(A)(3) amounting to Rs.1,41,03,750/-.

2.4 Aggrieved by the order passed by the Ld.AO assessee preferred appeal before the Ld.CIT(A).

3. The Ld.CIT(A) was of the opinion that, assessee is in the business of real estate and has agreed to sell sites to the society. The Ld.CIT(A) was of the opinion that since assessee agreed to sell sites to the society, it had to acquire lands, develop it into sites, and sell the sites to the society. Thus the Ld.CIT(A) also concluded that assessee is not an agent of the society, and it is a contract between one principal and another principle. The Ld.CIT(A) upheld the addition made by the Ld.AO.

3.1 Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us now.

3.2 Before us, the Ld.Counsel submitted that, assessee is a developer and agreed to sell residential sites to society for which it acquired lands. For purpose of acquisition it made payment of Rs.1,41,03,750/- by cash to the parties, which is disallowed by the Ld. AO under section 40(A)(3) of the Act.

3.3 The Ld.Counsel submitted that, assessee has also made payment in cheque to the said parties, which has been encapsulated in the assessment order at page 2. The agreements entered into with parties have been registered and stamp duty has been paid as per the market value.

3.4 He submitted that in the paper book at page 10-81 the agreements pertaining to purchase of the land from the relevant parties are placed along with the Ledger account wherein the payment paid to various vendors are mentioned as per the books of account of assessee. The Ld.Counsel submitted that, few owners are minors and has been represented by the legal guardians. It is submitted that at the instance of the vendors, who did not have any bank accounts, the payment were made in cash. He also submitted that such cash payments has not been denied by assessee and has been duly recorded in the books of account. He further submitted that it is not the case of the revenue that these are bogus transactions entered into between assessee and the vendors.

4. On the contrary, Ld.Sr.DR relied on the orders passed by the Ld.CIT(A). He also placed reliance on the decision of *Hon'ble Karnataka High Court* in case of *Nam Estates Pvt Ltd vs ITU* reported in (2020) 428 ITR 186 that upheld the decision of coordinate bench of this *Tribunal* reported in (2013) 141 ITD 659. He submitted that assessee has not established that the vendors to whom cash payments were not made, do not have any bank accounts.

5. We have perused submissions advanced by both sides in light of records placed before us.

5.1 The only issue raised by assessee is in respect of the disallowance of cash payment made by assessee to various vendors for purchase of land, under section 40 (A) (3) of the Act.

5.2 We note that, the agreements are entered with the assessee through the power of attorney holders. Amongst the vendors

there are few who are minors, who are represented by their natural guardians. Following are the reasons cited by assessee for which the cash payments have been made:

Sl. No	Particulars	Amount Paid	Date	Remarks
1	Shivarudramma & Others in respect of the land in Sy.No. 141 under the registered sale deed 19/04/2012.	10,00,000/-	18/04/2012	This cash payment was made one day prior to the sale deed at the insistence of some the Vendors who did not have bank accounts
2A	Shivarudraiah & Others in respect of lands in Sy.No. 141 under registered sale deed 15/03/2012.	5,00,000/-	15/03/2012	Cash paid on the date of registration of the sale deed at the insistence of the Vendors
2B	Shivarudraiah & Others in respect of the same lands in Sy.No. 141 under the sale deed mentioned above.	33,60,000/-	Various dates	Cash payments made on earlier dates on the insistence of some of the Vendors who did not have bank accounts failing which the acquisition of land was not possible

3A	Bhogaiah & Others in respect of lands in Sy.No. 67/9 as per the registered sale deed 16/06/2012.	14,25,000/-	16/06/2012	Cash paid on the date of registration of the sale deed at the insistence of the Vendors
3B	Jayamma & Others in respect of the lands in Sy.No. 67/11 & 67/12 under registered sale deed 16/06/2012.	6,75,000/-	16/06/2012	Cash paid on the date of registration of the sale deed at the insistence of the Vendors
4	Veeramma & Others in respect of the lands in Sy.No. 56/3 under the registered sale deed dated 02/03/2012	71,43,750/-	Various dates	Cash payments made on earlier dates on the insistence of some of the Vendors who did not have bank accounts failing which the acquisition of land was not possible

5.3 The necessity shown by assessee to make the payment in cash is that, the vendors insisted at the last moment in certain

cases. It is also noted that the said monies paid in cash to various vendors are out of drawings made from bank accounts and therefore exigency in making the such payment in cash cannot be suspected.

5.4 In case of an *CIT vs Nam Estates Pvt. Ltd.*, relied by the Ld.Sr.DR, we note that the reason for which the cash payments were made therein by the assessee was found to be incorrect. In the present facts of the case the reason for making the payments in cash to certain vendors by the assessee has not been found to be incorrect by any of the authorities below. There is no iota of evidence that is brought on record which could cast doubt on the reason for which the payment has been made in cash by assessee. Further it is also not the case of Ld. AO that, the transaction entered into between assessee and the Vendors towards purchase of the land is bogus. Admittedly payments made by the assessee by cheque has been accepted by the Ld. AO.

5.5 The Ld.counsel relied on the decision of *Hon'ble Karnataka High Court* in case of *M.K.Agrotech Pvt.Ltd.*, reported in 412 ITR 315. *Hon'ble Court* therein observed that, once the payee admits the acceptance of the monies in cash and has been credited into their respective accounts the object with which section 40(A)(3) was promulgated stands satisfied. We note that in the present facts of the case the monies received in cash has been recorded in the agreements entered into between the assessee and various vendors. There is no denial of having received the monies in cash by the vendors and therefore in the present facts of the case the observations of *Hon'ble Karnataka High Court* in case of *MK*

Agrotech (supra) would apply as against the decision relied by the Ld.Sr.DR.

5.6 Therefore we are unable to agree with the view taken by the Ld.CIT(A) and the same is reversed.

Accordingly the grounds raised by assessee stands allowed.

In the result appeal filed by assessee stands allowed.

Order pronounced in the open court on 23rd July, 2021

Sd/-
(B. R. BASKARAN)
Accountant Member
Bangalore,
Dated, the 23rd July, 2021.
/Vms/

Sd/-
(BEENA PILLAI)
Judicial Member

Copy to:

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

By order
Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-07-2021		Sr.PS
3.	Draft proposed & placed before the second member	-07-2021		JM/AM
4.	Draft discussed/approved by Second Member.	-07-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-07-2021		Sr.PS/PS
6.	Kept for pronouncement on	-07-2021		Sr.PS
7.	Date of uploading the order on Website	-07-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-07-2021		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS