

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.2856/PUN/2016
Assessment Year : 2012-13**

Vikrant Happy Homes Pvt. Ltd.,
301, Prasanna Arcade,
Old Agra Road, Trambak Naka,
Nashik – 422002

PAN : AAACV5949A

Appellant

V/s.

Deputy Commissioner of Income Tax,
Circle – 1, Nashik

Respondent

Assessee by : Shri Sanket Joshi
Revenue by : Shri M. Jasnani

Date of Hearing : 28-10-2021
Date of Pronouncement : 11-01-2022

ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 01-09-2016 passed by the Commissioner of Income Tax (Appeals)-1, Nashik [„CIT(A)“] for assessment year 2012-13.

2. The assessee raised as many as four grounds amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in confirming the addition made on account of disallowance u/s. 40A(3) of the Act in the facts and circumstances of the case.

3. Brief facts relating to the issue are that the assessee is a company engaged in the business of land dealing and development. The assessee conducts its business under the name and style as Vikrant Happy Homes Pvt. Ltd. The assessee filed return of income declaring a total income of Rs.3,16,20,860/- and the AO completed the assessment by determining the total income at Rs.3,22,91,187/- inter alia making addition u/s. 40A(3) of the Act. The CIT(A) confirmed the same. Aggrieved by which, the assessee is before us by raising above mentioned grounds.

4. Before us, the ld. AR, Shri Sanket Joshi submits that the assessee purchased certain lands/plots and made cash payments aggregating to Rs.3,50,000/- under exceptional circumstances exceeding Rs.20,000/-. He submits that all these lands are appearing under the closing stock as on 31-03-2012 and no deduction is claimed in respect of purchases for which cash payments are made. He contends vehemently that the provisions u/s. 40A(3) of the Act is not attracted towards expenses/purchases when there is no deduction claimed and argued that it is settled law that section 40A(3) of the Act only restricts the deductions which are otherwise allowable. He submits that the cash payments are genuine and the provisions u/s. 40A(3) is not attracted towards the genuine cash payments which were identified and acknowledged by payee. Further, the said cash payments were made keeping in view the business

exigency to finalize the deal and to avoid the competitors in snatching the deal.

5. The ld. DR, Shri M. Jaswani relied on the orders of authorities below and contended that the identical issue on similar facts was decided by this Tribunal by placing reliance in the case of Madhav Govind Dulshete Vs. ITO reported in 259 Taxman 949 (Bom.) passed by the Hon"ble High Court of Bombay. The Hon"ble High Court of Bombay held even though the assessee makes payments exceeding the limit Rs.20,000/- for genuine transactions the provisions u/s. 40A(3) of the Act is made applicable and the CIT(A) discussed the issue in detail and prayed to affirm the same.

6. Heard both the parties and perused the material available on record. As noted above the contention of the ld. AR is that the assessee did not claim the deduction and the provisions u/s. 40A(3) cannot be held to be invoked against such payments exceeding the limit Rs.20,000/-. He also placed on record Agreements at Page Nos. 1 to 20 which are true English translation of Agreements between the assessee and respective payees to show that the payments exceeding Rs.20,000/- totaling to Rs.3,50,000/- were incurred for genuine transaction, the transaction of which identified and acknowledged by the payees. We note that it is settled law as rightly pointed by the ld. AR when there is no deduction no disallowance would follow but however, in the present case, the CIT(A) by placing reliance on the Rule 6DD held the assessee does not fall under any of the exception provided therein. The CIT(A) also affirmed the view of the AO that though non-claiming of deduction the assessee debited the said expenditure involving cash payments exceeding Rs.20,000/- to the profit and loss account, which, in our opinion, the provisions under section could be

invoked. Another aspect as raised by the ld. AR is that the said expenditure were incurred for the business exigency though the expenditure debited to profit and loss account which is neutralized by showing the purchase of lands as stock in trade as on 31-03-2012 on credit side. According to him the provisions u/s. 40A(3) is not applicable.

7. We note that the certain High Courts including the Hon"ble High Court of Gujarat in the case of Anupam Tele Services Vs. ITO reported in (2014) 366 ITR 122 (Guj.) and the Hon"ble High Court of Rajasthan in the case of Harshila Chordia Vs. ITO reported in (2008) 298 ITR 349 (Raj.) have deleted the disallowance in the cases of genuine business transactions and certain other Hon"ble High Courts including the Hon"ble High Court of Bombay in the case of Madhav Govind Dulshete Vs. ITO reported in (2018) 259 Taxman 949 (Bom.), the Hon"ble High Court of Madras in the case of Vaduganathan Talkies and others Vs. ITO reported in (2020) 428 ITR 224 (Mad.), the Hon"ble High Court of Karnataka in the case of Nam Estates Pvt. Ltd. Vs. ITO reported in (2020) 428 ITR 186 (Kar.) and the Hon"ble High Court of Calcutta in the case of Bagmari Tea Company Ltd. Vs. CIT reported in (2001) 251 ITR 640 (Cal.) have confirmed the disallowance where the payment was made in cash exceeding the stipulated amount notwithstanding the genuineness of the transaction.

8. Let us examine the decision of Hon"ble Jurisdictional High Court in the case of Madhav Govind Dulshete (*supra*), brief facts therein, that the assessee engaged in the business of sale of Kerosene which was purchased from the notified dealers. Some of the payments were made in cash or by others in cheque. The AO made addition by invoking Section 40A(3) of the Act in respect of cash payments exceeding the limit prescribed under the

said provision. The CIT(A) and the Tribunal confirmed the view of AO. The Hon'ble High Court upheld the order of Tribunal sustaining the addition made by the AO rejecting the contention of the assessee that a genuine business transaction is not a ground for making addition u/s. 40A(3) of the Act.

9. Coming to the facts on hands in the present case the fact remains admitted that the sellers from whom the assessee purchased lands were identified the transaction and also acknowledged the cash payments, thereby, it shows the transaction is genuine, as discussed in the foregoing paragraphs that the assessee treated the said lands as stock-in-trade and no deduction claimed. The ratio laid down of the Hon'ble High Court of Bombay in the case of Madhav Govind Dulshete (*supra*) as to whether the disallowance is maintainable even the transaction is genuine, in our opinion, is not applicable to the facts on hand. However, we find merit in the alternative contention of the assessee that the expenditure incurred in cash forming part of the closing stock which means this has not been claimed as deduction while computing the income under the business head, therefore, the question of disallowance u/s. 40A(3) does not arise. Thus, the grounds raised by the assessee in this regard are allowed.

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

Order pronounced in the open court on 11th January, 2022.

Sd/-
 (Inturi Rama Rao)
 ACCOUNTANT MEMBER

Sd/-
 (S.S. Viswanethra Ravi)
 JUDICIAL MEMBER

Pune; Dated : 11th January, 2022.

// True Copy//

BY ORDER,

Sr. Private Secretary
ITAT, Pune