

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri B.R. Baskaran (AM)

I.T.A. No. 2947/Mum/2017 (Assessment Year 2012-13)

Shri Sunil Jayram Patil C/o. Adv. N.A. Kulkarni Wadal Building 1 st Floor, Near DNS Bank Manpada Road Dombivali East Thane, Pin : 421201 PAN : AKYPP8865C (Appellant)	Vs.	ITO Ward 3(4) Rani Mansion Murbad Road Kalyan West Thane Pin : 421301. (Respondent)
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Assessee by	Shri N.A. Kulkarni
Department by	Shri Ram Tiwari
Date of Hearing	19.9.2017
Date of Pronouncement	19.9.2017

ORDER

The appeal filed by the assessee is directed against the order dated 16-20-2017 passed by Ld CIT(A)-1, Thane and it relates to the assessment year 2012-13. The assessee is aggrieved by the decision of Ld CIT(A) in partially confirming the disallowance made u/s 40A(3) of the Act.

2. I heard the parties and perused the record. The assessee is a civil contractor undertaking building projects in the name of M/s Vidhi Developers. The assessee has shown work in progress of Rs.15,40,575/- and declared a net profit of Rs.1,39,647/- thereon. The AO noticed that the work in progress amount shown in the Balance sheet was Rs.50,40,575/-, whereas in the profit and loss account, the assessee has shown a sum of Rs.15,40,575/- only. Thus there was a difference of Rs.35.00 lakhs between the two figures. When question, it was submitted that the assessee has purchased a land located at Survey No.12/17E, Davdi Village from his family members and agreed to pay a

sum of Rs.35.00 lakhs by way of cash. It was submitted that the land cost has been taken directly to the Balance sheet and included in Work in Progress therein and the same explains the difference. The AO took the view that the provisions of sec. 40A(3) shall be applicable, since the assessee has paid the amount in cash for acquiring land which was part of its project. Accordingly he disallowed the above said amount of Rs.35.00 lakhs u/s 40A(3) of the Act.

3. Before Ld CIT(A), the assessee submitted that the assessee has purchased an agricultural land from the family members for a sum of Rs.35.00 lakhs, but paid a sum of Rs.21.00 lakhs only in this year and the balance amount was shown as payable in the balance sheet. It was further contended that the assessee has paid the consideration by way of cash as the land was an asset. Further the cost of land has not been debited to the Profit and loss account also. Accordingly it was contended that the provisions of sec. 40A(3) are not applicable to Balance Sheet items. In this regard, the assessee placed reliance on the decision rendered by the Delhi bench of ITAT in the case of Westland Developers P Ltd (ITA No.1752/Del/2013 dated 22.08.2014). The Ld CIT(A) did not agree with the contentions of the assessee. However he restricted the addition to Rs.21.00 lakhs, since that amount has been paid by the assessee in cash during the year under consideration. Still aggrieved, the assessee has filed this appeal before Tribunal.

4. The Ld A.R reiterated the contentions urged before Ld CIT(A). On the contrary, the Ld D.R submitted that the assessee has already started developing the land purchased from the family members and hence the land constitutes his trading asset. Since the payment has been made for a trading asset, the provisions of sec. 40A(3) would apply, even if the assessee did not route the same through the Profit and loss account.

5. Having heard rival submissions, I am of the view that the order passed by Ld CIT(A) does not call for any interference. The assessee has treated the land as his trading asset only and hence he has included the cost of land in the Work in Progress. Further, the assessee has already incurred a sum of Rs.15.40 lakhs for carrying construction on the land and has offered income thereon also, under percentage completion method. Hence the intention of the assessee from the beginning is very clear, i.e., he has treated the said land as his trading asset. Once the payment is made for a trading asset, in my view, the provisions of sec. 40A(3) would be applicable even if the cost of that asset was not routed through the Profit and loss account. I notice that the Ld CIT(A) has rightly distinguished the decision rendered by Delhi bench of Tribunal, on which the assessee had placed reliance. Accordingly I uphold the order passed by Ld CIT(A).

6. In the result, the appeal filed by the assessee is dismissed.

Order has been pronounced in the Court on 19.9.2017.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 19/9/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai