

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.582/Viz/2014
(निर्धारण वर्ष/ Assessment Year:2008-09)**

Income Tax Officer
Ward-3(2)
Visakhapatnam

Vs. M/s Sai Sravanthi
Constructions
D.No.54-12-20, Vidya Nagar
H.B.Colony, Visakhapatnam
[PAN :AAYFS5945G]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

CO No.97/Viz/2018

(Arising out of I.T.A. No.582/Viz/2014)

(निर्धारण वर्ष/ Assessment Year:2008-09)

M/s Sai Sravanthi Constructions
D.No.54-12-20, Vidya Nagar
H.B.Colony, Visakhapatnam
[PAN :AAYFS5945G]

Vs. Income Tax Officer
Ward-3(1)
Visakhapatnam

राजस्व की ओर से / Revenue by
निर्धारिती की ओर से / Assessee by

: Smt.Suman Malik, DR
: Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing

: 21.03.2019

घोषणा की तारीख/Date of Pronouncement

: 05.04.2019

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the revenue against the order of the
Commissioner of Income Tax (Appeals) [CIT(A)], Visakhapatnam vide I.T.A.

No.0167/13-14/ITO W-3(2), VSP/2014-15 dated 19.08.2014 and cross objections filed by the assessee in support of the order of the Ld.CIT(A) for the Assessment Year (A.Y.) 2008-09.

2. All grounds of appeal are related to the addition of Rs.1,37,13,800/- against the payments made for purchase of vacant sites. During the assessment proceedings, the Assessing Officer (AO) found that the assessee has made the payments in cash for purchase of vacant sites as per the registered sale documents. Since the payments were made in cash, the AO called for explanation as to why the same should not be disallowed u/s 40A(3) of the Income Tax Act, 1961 (in short 'Act'). In response to the notice issued, the assessee submitted that the provisions of section 40A(3) are not applicable in this case, since all the payments were genuine and the payments were made under the supervision of Sub Registrar of Govt. of Andhra Pradesh and explained that the payments were made in view of the business expediency. Further, the Ld.AR submitted before the AO that the payments were made by the partners in the capacity of agents to the firm and hence, payments made through partners would come under exceptional circumstances as per rule 6DD(K) of the Act, hence requested not to make the disallowance.

3. Not being convinced with the explanation of the assessee, the AO held that the payments made for purchase of sites are covered u/s 40A(3) of the Act and exceptions under rule 6DD(K) are not applicable. The AO also relied on the decision of Hon'ble Supreme Court in the case of Attar Singh and Gurumukh Singh Vs. ITO (191 ITR 667) and accordingly disallowed a sum of Rs.1,37,13,800/-.

4. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and argued that the assessee is a builder and purchased certain house sites during the financial year 2007-08, made advance payments in the earlier financial year i.e. 2006-07. The Ld.AR further submitted that the disallowance of expenditure u/s 40A(3) is applicable in respect of the expenditure claimed by the assessee, but not applicable for the payments in respect of acquiring the capital assets. In the case of the assessee, the Ld.AR submitted that the payments were made by the purchasers in view of the business expediency since the sellers have insisted for cash payments. The Ld.AR further stated that since no expenditure was debited to Profit & Loss account, it is not justified in making the addition. The Ld.CIT(A) convinced with the explanation of the assessee. Since the

assessee has not claimed any expenditure and the payment was made for purchase of capital asset deleted the addition and allowed the appeal of the assessee. For the sake of clarity and convenience we extract relevant part of the order of the Ld.CIT(A) which reads as under :

“6.1.3. I have considered the submissions made and the details filed. From the perusal of the financial statements filed, it is evident that the assessee has not claimed the impugned payments as deduction in its profit and loss account. The payments were apparently made for purchase of sites and these sites were reflected as current assets in the balance sheet. Thus the payments were made towards acquisition of capital assets and in respect of which the provisions of Sec.40A(3) would not be applicable. In this regard, it is relevant to refer to the Press Note published on 14.2.1969 and 25.3.1969 wherein it was clarified that the provisions of Sec.40A(3) would not apply to transactions which do not constitute expenditure deductible in computing the taxable income. Further, in the CBDT Circular No.34 dated 5.3.1970 [76 ITR St.13] it was clarified that the provisions of Sec.40A(3) will not apply to repayment of loans or payments towards purchase price of capital assets such as plant and machinery and not for resale, The Hon'ble ITAT, Delhi in the case of Kanshiram Madanlal Vs. ITO [1983, 3 ITD 290 Del.] has held that the provisions of sec.40A(3) would not apply to purchase of capital asset. In view of this legal position, I am of the view that the AO is not justified in making the impugned disallowance. Accordingly, the AO is directed to delete the same. This ground of appeal is allowed.”

5. On the other hand On the Ld.AR relied on the grounds of appeal.
6. We have heard both the parties and perused the material placed on record. In the instant case, though the assessee had made the cash payments, but not debited any expenditure to the P&L accounts. Disallowance u/s 40A(3) is applicable in case of expenditure exceeding payment of Rs.20,000/-. In case, the assessee do not claim expenditure,

there is no case for the disallowance u/s 40A(3). In the instant case, there is no dispute that the assessee has not claimed the expenditure and the payment was made for purchase of vacant sites and the value of site was taken directly to the balance sheet under the head current assets. In the subsequent assessment year, the assessee has rightly classified the sites under the head 'capital assets'. Therefore, it is established that the payment was made for acquiring capital asset and disallowance u/s 40A(3) does not attract in the case of payments for capital assets or if the expenditure is not claimed in the Profit & Loss account. Since the assessee has not claimed any expenditure in the Profit & Loss account, there is no case for making addition u/s 40A(3). Accordingly, we uphold the order of the Ld.CIT(A) and dismiss the appeal of the revenue.

7. The assessee filed cross objection with delay of 1259 days and no petition for condonation was filed. Therefore, the cross objection filed by the assessee are dismissed in limine.

8. In the result, appeal filed by the revenue as well as the cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 5th April, 2019.

Sd/-

(वी.दुर्गा राव)
(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 05.04.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Sai Sravanthi Constructions, D.No.54-12-20, Vidya Nagar, H.B.Colony, Visakhapatnam
2. राजस्व/ The Revenue - Income Tax Officer, Ward-3(2), Visakhapatnam
3. The Commissioner of Income Tax-1,Visakhapatnam
4. The Commissioner of Income-Tax (Appeals), Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam