

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री रमेश सी० शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH. C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 621/JP/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Regency Buildhome LLP, 6-D, Corporate Tower A-2, Near Jawahar Circle, JLN, Marg, Jaipur-302017.	बनाम Vs.	The ACIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AANFR 6135 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Mukesh Soni (C.A.)
राजस्व की ओर से / Revenue by : Shri P.P. Meena (ACIT)

सुनवाई की तारीख / Date of Hearing : 30/04/2019
उदघोषणा की तारीख / Date of Pronouncement: 20/06/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 22.02.2018 of the Id. CIT(A)-2, Jaipur for the assessment year 2013-14.

The assessee has raised following grounds:-

"1. Under the facts and circumstances of the case and in law, the order passed by Ld. Commissioner of Income Tax (Appeals)-2, Jaipur, dated 22.02.2018 is perverse, arbitrary and bad in law.

2. Under the facts and circumstances of the case and in law, the Ld. CIT(Appeals)-2, Jaipur, has erred in upholding the addition of Rs. 10,00,000/- made by the Ld. AO u/s 40A(3) of the Act.

3. Under the facts and circumstances of the case and in law, Ld. CIT(Appeals)-2, Jaipur, has erred in upholding the levy of interest under section 234B and 234C of the Act.

4. The appellant craves to alter, amend and modify any ground of appeal.”

2. The solitary issue arises in this appeal for our consideration and adjudication is whether in the facts and circumstances the addition of Rs. 10,00,000/- made by the AO U/s 40A(3) of the Act and upheld by the Id. CIT(A) is justify. The assessee firm is into business of real estate. During the year under consideration the assessee vide sale deed dated 31.12.2012 purchase land situated at village Shyampura Buhariya, Mohanpura, Tehshil- Sanganer, Jaipur from two co-owner namely Shri Jagdish Narain Sharma and Shri Om Prakash Jain for a total consideration of Rs. 66 ,00,000/-. As per the payment details given in the sale deed the assessee has paid Rs. 5,00,000/- each to the seller and therefore, the total amount of Rs. 10,00,000/- was paid in cash by the assessee towards the purchase consideration out of the total consideration of Rs. 66,00,000/-. The AO invoked the provisions of Section 40A(3) of the Act and disallowed the said amount of Rs. 10,00,000/- being in violation of the said provisions as well as Rule 6DD

of the Income Tax Rules. The assessee challenged the action of the before the Id. CIT(A) and raised a detailed arguments with the support of various decisions however, the Id. CIT(A) was not impressed with the contention of the assessee and upheld the disallowance made by the AO.

3. Before us, the Id. AR of the assessee has submitted that reiterated its contention as raised before the Id. CIT(A):- It was to be appreciated that the agricultural land bought by the assessee was co-owned by two sellers. The assessee was compelled to make payment to the said sellers in order to freeze the deal. Therefore, the assessee paid the major amount of consideration to the sellers through banking channels which is evident from the sale deed. However, at the time when both the parties actually met to shake hands and finalize the deal, the sellers refused to finalise the deal for the amount which was already transferred by the assessee to the sellers through bank. Therefore, the assessee got no recourse but to make the payment of Rs. 10,00,000/- through cash as the assessee does not have any bank account in the area in which land is situated. Further, it is humbly submitted that the said payment was made by withdrawing the cash from the bank account of the assessee, which

substantiates the fact that the said payment was not made through undisclosed sources of the assessee. The Id. AR has contented before your good self that bank transfer for the short amount could not have been done on the same day as the bank account of the assessee was maintained at Jaipur. Therefore, in lieu of the said unavoidable/exceptional circumstances that existed at the time of execution of the sale deed, the assessee was compelled to make the payment of balance amount of Rs. 10,00,000 /- in cash to the sellers. The Id. AR submitted that even the seller was not allowing the assessee to make the balance payment through cheque, as cheque would have taken some days for getting cleared and the seller wanted the payment instantly. Issuing of cheque would have resulted in elapsing of some time and there would have been a case wherein the seller would have changed her mind. Moreover, it was humbly submitted that as the deal for the purchase of land was being done at Shyampura and the assessee did not have any bank account in the said area, it was not possible for the assessee to make a Demand Draft or make payment through banking channels for the remaining amount. In this regard, your honour's attention is kindly invited on Circular No. 220, dated 31-5-1977 in which it has

been clearly stated that if a transaction is taking place in an area where there is no bank account of either the seller or the purchaser and moreover, if there is a situation in which the seller refuses to accept the payment by way of crossed cheque/draft and the purchaser's business interest would suffer due to such resistance of the seller then the payment made in cash in both the situations would be considered as exceptional circumstance(s) as envisaged under Rule 6DD of the IT Rules. Moreover, the Id AR has submitted that it has been held in various judgments that the provisions of Section 40A(3) of the Act were brought into force to check and prevent those transactions in which circulation of unaccounted money is involved. However, transactions which are genuine in nature and in which the identity of the payee is not in question would not *per se* fall under the ambit and scope of Section 40A(3) of the Act. Further, it should be appreciated that the exceptions and circumstances mentioned in Rule 6DD of the IT Rules are not exhaustive in nature and the same should be considered and interpreted liberally. The Id. AR has relied upon the following decisions:-

- Smt. Harshila Chordia vs. ITO (2007) 298 ITR 349.

- Attar Singh Gurmukh Singh vs. ITO 191 ITR 667.
- A. Daga Royal Arts vs. ITO 94 taxmann.com 401.

4. On the other hand, the Id. DR has submitted that the assessee has not shown any circumstances which false in the exception as provided Under rule 6DD(j) of the Income Tax Rules and therefore, the payment made by the assessee in violation of the provisions of Section 40A(3) of the Act is liable to be disallowed. He has further contended that when the assessee has made major payment through banking channels and the sellers were having bank accounts then the case does not fall in the category of exception or business exigency as claimed by the assessee. He has relied upon the orders of the order of the authorities below.

5. We have considered the rival contentions as well as the relevant material on record. The assessee has paid the purchase considering partly through cash and partly through banking channels. The detail of purchase consideration paid by the assessee is given in the sale deed as under:-

S.N.	Chash/ Cheque	Amount	Bank name and branch	Receiver	Date

01.	Cash	5,00,000	-----	Jagdish Narayan Sharma	20.09.11
02.	Cash	5,00,000	-----	Omprakash Jain	20.09.11
03.	RTGS	10,50,000	HDFC Bank, Tonk, Road, Jaipur.	Jagdish Narayan Sharma	20.09.11
04.	RTGS	10,50,000	HDFC Bank, Tonk, Road, Jaipur.	Omprakash Jain	20.09.11
05	514898	17,50,000	HDFC Bank, Tonk, Road, Jaipur.	Jagdish Narayan Sharma	07.12.12
06.	514899	17,50,000	HDFC Bank, Tonk, Road, Jaipur.	Omprakash Jain	07.12.12

Thus it is clear that as per these details given in the sale deed, the assessee paid Rs. 10,00,000/- (Rs. 5,00,000 each) to the sellers on 20.09.2011 and on the same date the amount of Rs. 10,50,000/- each was also paid through RTGS to the sellers therefore, the transaction of payment in cash as well as through RTGS were made on the same date i.e. 20.09.2011. Subsequent, the payment on 07.12.2012 is also through cheque therefore, in light of these facts and specifically when the cash was paid on the same date when the another payment of Rs. 21,00,000/- was made through RTGS clearly shows that the sellers were having all banking facilities and

accepted the payment through RTGS then, the contention of the assessee that the cash was paid as per demand of the seller in the absence of any circumstances or other material to indicate such demand of payment in cash is devoid of any substance or merit. The entire case of the assessee is based on the premises that the assessee has paid the said amount of Rs. 10,00,000/- in cash at the time of hand shake and confirming to deal with the seller however, when at the same time the assessee has transferred the payment of Rs. 21,00,000/- through RTGS in the account of the seller then it does not reflect that there was any compelling circumstances under which the assessee has made this payment in cash. Since, this payment was much prior to the date of sale deed therefore, it does not fall in the category that at the last movement the assessee had no option to make the payment in cash. It appears that the payment was made through RTGS when the parties have negotiated to deal and agreed for consideration. Therefore, in the facts and circumstances of the case, it is apparent that no such exceptional circumstances exist at the time of the said payment when the amount of Rs. 21,00,000/- was paid on the same date through RTGS.

6. As regards the decisions relied upon by the Id. AR of the assessee there is no quarrel if the assessee is able to demonstrate the circumstances for making the payment in cash that it was beyond the control of the assessee then the case would fall in the exception as provided Under rule 6DD(j) of the IT Rules. Therefore, when the assessee is not able to make out a case of pressing circumstances for making the payment in cash then the said decisions will not help the case of the assessee. Accordingly, we do not find any error or illegality in the order of the orders of the authorities below.

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

Order pronounced in the open court on 20/06/2019.

Sd/-
(रमेश सी0 शर्मा)
(Ramesh. C. Sharma)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20/06/2019.

*Santosh.

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

1. अपीलार्थी / The Appellant- Regency Buildhome LLP, Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-6, Jaipur.
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 621/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar