

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.467/PUN/2019

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Girish Kushalchandra Poddar,
203-204, Guru Ashish, Sharanpur Road,
Canada Corner, Nashik.

..... अपीलार्थी /
Appellant

PAN No.ABLPP2178A.

बनाम v/s

The Income Tax Officer,
Ward 2(2), Nashik.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Nikhil Pathak.

Revenue by : Shri Pravin Chavan.

सुनवाई की तारीख / Date of Hearing : 10.10.2019	घोषणा की तारीख / Date of Pronouncement: 30.10.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – 1, Nashik dated 01.01.2019 for A.Y. 2010-11.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual stated to be dealing in land/plots and land development. In this case, originally assessment was framed u/s 143(3) of the Act vide order dated 15.02.2013 and the total income was determined at Rs.4,21,410/-. Subsequently, Ld.CIT vide order passed u/s 263 of the

Act held the order of AO to be prejudicial and erroneous to the interest of Revenue and accordingly set aside the order and directed the AO to complete the assessment afresh as per the directions contained therein. Consequent to the order of Ld.CIT passed u/s 263 of the Act, assessment was framed u/s 143(3) r.w.s. 263 of the Act vide order dated 28.03.2016 and the total income was determined at Rs.14,09,585/- inter-alia by disallowing expenditure u/s 40A(3) of the Act of Rs.9,88,175/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 01.01.2019 (in appeal No.Nsk/CIT(A)-1/180/2017-18) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

“The learned CIT(A) erred in confirming the addition of Rs.9,88,175/- u/s 40A(3) in respect of the cash payments made for purchase of land.

2. The learned CIT(A) failed to appreciate that the appellant had genuine reasons for making cash payments and therefore, the disallowance u/s 40A(3) was not warranted.

3. The learned CIT(A) was not justified in confirming the disallowance u/s 40A(3) when during the year, the appellant had not claimed the cost of the land in respect of which cash payments were made as a deduction from the business income.

3.1 The learned CIT(A) failed to appreciate that the land for which cash payments were made continued with the appellant as a closing stock at the end of the year and therefore, the disallowance u/s 40A(3) was not warranted during the year.”

3. All the grounds being inter-connected are considered together.

4. It was noticed that during the year under consideration assessee had purchased land, (the details of which are given in page 2 of the assessment order) amounting to Rs.35,04,926/- and out of which Rs.11,67,710/- was paid in cash. The assessee was asked to explain as to why the payment for purchase of land made in cash aggregating to Rs.11,67,710/- not be disallowed u/s 40A(3) of the Act, to which assessee

inter-alia submitted that assessee had purchased the land from various sellers and the sale deed was registered with the Sub-Registrar. It was submitted that some of the sellers were not ready to come to the Sub-Registrar's office and sign the documents until they received the full payments and some of them were asking for cash payment stating that they did not have the bank accounts. In such a situation, the cash was withdrawn by the assessee from the bank account, a day prior to the proposed date of registration, and the payment was made in cash. It was further submitted that the transaction is genuine and well supported by documentary evidence in the form of bank statements, registered sale deeds etc., and therefore no disallowance be made u/s 40A(3) of the Act. The submissions of the assessee were not found acceptable to the AO. AO noted that summons u/s 131 of the Act were issued to all the nine parties. Out of which two parties responded to the summons issued and attended. In the statement, those parties submitted that they wanted cash payment to meet some religious / marriage and agricultural purposes. AO noted that apart from making submission for asking for cash payment, no supporting documentary proof was furnished by them to substantiate their submissions. AO therefore concluded that there was no situation that compelled the assessee to make cash payment to the sellers of the land and that assessee had violated the provisions of Sec.40A(3) of the Act by making cash payment exceeding Rs.20,000/- in a day to a single party towards purchase. He therefore computed the payments exceeding Rs.20,000/- in cash amounting to Rs.9,88,175/- out of the total cash payment of Rs.11,67,700/- and disallowed the same. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO by observing as under :

“5.1 On perusal of the assessment order, the submissions of the appellant and the facts of the case, it is seen that, the appellant has violated the provisions to section 40A(3) of the Act. In this regard, the plea taken by the appellant in appellate proceedings is not acceptable on the ground that a) During 263 proceedings, the AR of the appellant has not explained with documentary evidences before the Ld.Pr.CIT-2, Nashik, and also failed to submit the details as follows – i) Name and addresses of the persons, who do not have bank account and to whom installments towards the purchase have been made in cash, as mentioned in appellant's submission dated 24.02.2015. ii) Break-up between the cash payment and cheque payment, name wise and amount wise. b) Even, in the assessment proceedings, the appellant has failed to submit the complete details of the break-up of cash and cheque payments to parties/persons in order to ascertain the correct transaction. In Para 4 of the assessment order, the assessing officer has elaborately discussed, the reasons for disallowance u/s 40A(3) of the Act.

Therefore, in view of the above stated facts, the addition made by the assessing officer is sustained.”

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

5. Before me, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further pointed to the submissions made before AO with respect to the compulsion for making the payment in cash. He further submitted that the cash amounts withdrawn from the bank were duly reflected in the bank statements and the sale deeds were also registered before the Sub-Registrar. He therefore submitted that the transactions are genuine and are being supported with documentary evidence. With respect to the observation of the AO that the purchase deed was registered on 21.08.2009, he submitted that the observation is incorrect as the deed was got ready on 21.08.2009 but was registered on 24.08.2009 and the copies of the deed were also presented before the AO but the same was disregarded by him. He further submitted that Ld.CIT(A) while deciding the issue has only considered the fact about not submitting the documentary evidences in 263 proceedings but has not controverted the submissions made by assessee before Ld.CIT(A). He further submitted

that since the purchase price has been paid before the Sub-Registrar and the transaction is genuine, then no disallowance u/s 40A(3) of the Act is called for and in support of this proposition, he relied on the decision in the case of Pune Tribunal in the case of Shri Madanlal Bastimal Chordiya Vs. ACIT in ITA No.2944/PUN/2016 order dated 27.06.2019. He also placed on record the copy of the aforesaid decision. With respect to his contention that when the transactions are genuine and there was reasonable explanation for making payments in cash, no disallowance u/s 40A(3) of the Act is called for, he relied on the decision in this case of Pune Tribunal in the case of Shri Shoukat Ahamed Makhubhai Vs. ACIT in ITA No.508/PUN/2015 order dated 18.01.2018. He also placed on record the copy of the aforesaid decision and further submitted that the Co-ordinate Bench of the Tribunal while holding that when the transactions are genuine and there was reasonable explanation for payment of cash, no disallowance u/s 40A(3) of the Act is called for, had relied on the decision of Hon'ble Gujarat High Court in the case of Anupam Teleservices Vs. ITO reported in (2014) 366 ITR 122 and the decision of Hon'ble Apex Court in the case of Attar Singh Gurumukh Singh Vs. ITO reported in 191 ITR 667 (SC). He therefore submitted that the addition made by the AO and confirmed by Ld.CIT(A) be deleted. Ld. D.R. on the other hand supported the order of AO and submitted that out of nine parties to whom the summons were issued only two parties attended and thus, the genuineness of the transaction has not been proved by the assessee. He thus supported the order of lower authorities.

6. I have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the disallowance

u/s 40A(3) of the Act. It is an undisputed fact that assessee is in the business of buying of land/plots, had purchased land amounting to Rs.35,04,926/- and out of which an amount of Rs.10,51,700/- was paid in cash. It is the contention of the assessee that the buyers of the land had insisted for cash payments and therefore, assessee had made the cash payment as there is no other option but to make the cash payment so as to complete the deal. It is also the submission of the Ld.A.R. that the cash withdrawn by the assessee for making the payments is duly reflected in the books of accounts and the registration of document was done before the Sub-Registrar. The aforesaid contention of the Ld.A.R. has not been controverted by the Revenue. I further find that AO has noted about two out of nine parties appearing before him in response to summons issued u/s 131 of the Act had stated about the need for cash payment to meet religious expenses, marriage expenses and for agricultural purpose. The contentions of those parties have not been found to be false or untrue. I find that Hon'ble Apex Court in the case of Attar Singh Gurumukh Singh (supra) has held that the genuine and bonafide transactions are not to be disallowed u/s 40A(3) of the Act. I further find that Hon'ble Gujarat High Court in the case of Anupam Teleservices (supra) after relying on the decision of Hon'ble Apex Court in the case of Attar Singh Gurumukh Singh (supra) held that when the transactions are genuine and there was reasonable explanation of payment of cash, no disallowance u/s 40A(3) of the Act is called for. I further find that in the case of Shri Madanlal Bastimal Chordiya (supra), the Co-ordinate Bench of the Tribunal has held that when the purchase price has been paid by the assessee before the Sub-Registrar and the transaction is genuine, no disallowance u/s 40A(3) of the Act is called for. Before me, no material has been placed by

Revenue to demonstrate that the transaction of land purchase made by the assessee was not a genuine transaction. In such a situation, considering the totality of the aforesaid facts and relying on the aforesaid decisions, I am of the view that no disallowance u/s 40A(3) of the Act is called for in the present case. I therefore direct the deletion of addition made by the AO. **Thus, the grounds of the assessee are allowed.**

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

Order pronounced on 30th day of October, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 30th October, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1, Nashik.
4. Pr. CIT-2, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.