

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**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.175/Viz/2019
(निर्धारण वर्ष/Assessment Year : 2005-06)**

M/s Priyanka Real Estates &
Developers
D.No.25-1-3, Jayakrishnapuram
Rajamahendravaram

Vs. Income Tax Officer
Ward-2(2)
Rajamahendravaram

[PAN : AAIFP5406H]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

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

सुनवाई की तारीख / Date of Hearing

: 29.10.2019

घोषणा की तारीख/Date of Pronouncement

: 08.11.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Tirupati in I.T.A. No.350/2015-16/CIT(A)/TPT dated 14.02.2019 for the Assessment Year (A.Y.) 2005-06.

2. All the grounds of appeal are related to the addition made by the Assessing Officer (AO) u/s 40A(3) of the Income Tax Act, 1961 (in short 'Act'). In this case, assessment was completed originally u/s 143(3) by an order dated 25.09.2007. Subsequently, the assessment was taken up for revision u/s 263 by Commissioner of Income Tax, Rajahmundry and found that the assessee has debited the amount of Rs.53.62 lakhs towards site purchases in the P&L account for purchase of 6.39 acres of land from several parties vide two agreements dated 28.05.2004 and 03.06.2004 as per the details given below :

| | | Date | Amount in Lakhs | Mode of Payment |
|------|----------------------------|------------|-----------------|-----------------|
| (i) | Agreement dated 28.05.2004 | 28.05.2004 | 4.00 | Cash |
| | | 08.09.2004 | 8.00 | Cash |
| | | 24.11.2004 | 3.74 | Cash |
| | | 14.07.2004 | 1.00 | Cash |
| | | 05.08.2004 | 2.50 | Cash |
| | | 23.08.2004 | 7.00 | Cash |
| | | 30.06.2004 | 5.00 | Cash |
| | | 04.07.2004 | 1.00 | Cash |
| (ii) | Agreement dated 03.06.2004 | 03.06.2004 | 2.00 | Cash |
| | | 14.07.2004 | 1.60 | Cash |
| | | 05.08.2004 | 3.50 | Cash |
| | | 01.02.2005 | 4.00 | Cash |
| | | 17.09.2004 | 6.03 | Cash |
| | | 03.11.2004 | 2.00 | Cash |

2.1. Since the payment was made in excess of Rs.20000/-, in violation of provisions of section 40A(3) of the Act, the Ld.CIT viewed that the AO ought to have disallowed 20% of the purchase consideration as provided u/s 40A(3) of the Act. Since the AO has failed to examine the issue, the Ld.CIT viewed that the assessment passed by the AO u/s 143(3) was erroneous and prejudicial to the interest of the revenue, hence, set aside the order of the AO with a direction to redo the assessment as per the directions given u/s 263. Before the Ld.CIT, the assessee explained that it has made payments to the agents and the agents in turn have made the cash payments to the land owners who insisted for cash payments and furthermore, submitted that the land owners were agriculturists / farmers and they do not have bank account and some payments were also made on holidays. The Ld.CIT set aside the orders of the AO with a direction to redo the assessment with the following directions :

“(i) To examine whether the land owners are really agriculturists and payments were made by the assessee in any villages where there are no banks or whether payments were made on holidays and whether there was any need for making cash payments.

(ii) To bring on record the agreement, if any between the assessee firm and Sri G.V.K.Chowdary in the light of the contentions made in the reply to the show cause letter issued to the assessee to revise the Assessment Order passed by the AO for assessment year 2005-06.

(iii) To examine the applicability or otherwise of the decision of the Hon'ble Tribunal, Chennai B Bench (Income Tax Officer Vs. Smt. N.Padma) to the facts of the assessee's case.

(iv) To examine whether the provisions of Sec.6DD applies to the facts of the case.

(v) *To bring on record if there is any agreement between the agent and the land owners regarding the mode of payment etc. to be made to the land owners."*

2.2. The AO has taken up the assessment to give effect to the order of the Ld.CIT and called for the explanation of the assessee. The assessee filed explanation, the gist of which reads as under :

1. *All the cash payments were made to the land owners through our agent Sri GV.K.Chowdary from time to time.*
2. *As per the understanding between the land owners and our agent, he was liable to pay the amount to land owners and the land owners had to execute all necessary documents to pass on the title to prospective buyers. Copy of the affidavit given by our agent Sri G.VK.Chowdary which was filed before the Hon'ble Commissioner of Income Tax enclosed herewith for your kind perusal. We have also enclosed herewith the copies of the receipts issued by the agent for the amounts received by him towards the amounts payable to the land owners, which show that all the payments were made through our agent to the land owners.*
3. *The Payments were made to the small farmers who are residing in villages and are not having any Bank accounts.*
4. *Copies of the Ryot pass books of the both the land owners evidencing the holding of land by them are enclosed herewith.*
5. *During the year under consideration, on one occasion the payment was made on a Bank holiday (i.e. on 04-7-2004, which was a Sunday) of Rs.1.00 lakh and the Bank was not served on that day and also insisted the agent to make payment in cash.*

2.3. The AO examined the explanation of the assessee and held that the entire payments were made to the land owners through agent is an afterthought and cannot be relied upon. The AO further viewed that since the endorsements were made on the reverse side of the agreement, the affidavit of Shri G.V.K.Chowdary is unreliable and against the facts. The contention of the assessee that the payments were not made to the

landlords directly also is untenable. Therefore, the AO did not accept the contention of the assessee and further viewed that the decision relied upon by the assessee in the case of Smt.N.Padma by ITAT, Chennai Bench has no application and accordingly made the addition of Rs.10,27,400/- u/s 40A(3) of the Act i.e. 20% of the expenditure of Rs.51,37,000/-.

3. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition made by the AO.

4. Against the order of the Ld.CIT(A), the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that the assessee has made agreement with Shri G.V.K.Chowdary for procuring the lands and he was responsible to make payment to the land owners and execute necessary documents to pass on the title to the prospective buyers. The copy of the affidavit was furnished before the AO and the Ld.CIT(A). The assessee further submitted that all the land owners were small farmers residing in villages and having no bank accounts. He furnished the copies of the ryotwari passbooks of the land owners evidencing the holding of the land and establishing the identity. The Ld.AR also submitted that the payment of Rs.1.00 lakh was made on 04.07.2004 which was a holiday to the bank. Since the payments were made to the small farmers who are not

having bank accounts through agents, the Ld.AR argued that the payment is covered by the exceptions in Rule 6DD, hence requested to set aside the order of the Ld.CIT(A) and allow the appeal of the assessee. The assessee also taken support of the order of this Tribunal in the case of Sri K.Phani Kumar Vs. ACIT in I.T.A. No.300/Viz/2015 dated 30.11.2018 and argued that on similar facts, the Tribunal has deleted the addition made u/s 40A(3) of the Act. Therefore, argued that the assessee's case is squarely covered by the decision of this Tribunal, hence, requested to set aside the orders of the Ld.CIT(A) and allow the appeal of the assessee.

5. On the other hand, the Ld.DR supported the orders of the lower authorities.

6. We have heard both the parties and perused the material placed on record. In the instant case, the contention of the assessee is that the assessee has appointed Shri G.V.K.Chowdary as an agent for procurement of the land, since the assessee was not having sufficient knowledge with regard to the local problems of the lands and the lands owners. The assessee further submitted that the assessee has made the cash payment to Shri G.V.K.Chowdary who was acting as an agent of the assessee firm and in turn the agent had made payments to the landlords. The assessee also

issued debit vouchers for payments of cash to Shri G.V.K.Chowdary and also filed the copy of affidavit before the Ld.CIT(A) as well as the AO. Apart from the above, the assessee also furnished copies of ryotwari passbooks evidencing the land holdings of the owners and establishing the identity of vendors and the nature of land. As seen from the assessment order, the assessee also filed affidavit from land owners insisting the payments in cash. The AO did not believe the contention of the assessee and brushed aside the submissions merely because of the endorsements on the reverse side of the agreement acknowledging the receipt of cash payment. In the instant case, there is no dispute that the land owners have given endorsement to the effect that they had received the cash on various dates. However, as per the affidavit, land owners have insisted for cash payments and Shri G.V.K.Chowdary has acted as an agent and the firm has given the cash to Shri G.V.K.Chowdary who in turn made the disbursements to the land owners. Merely because of endorsement made on agreement it does not conclusively prove that the assessee made cash payment directly to the land owners. Though Shri G.V.K.Chowdary has given the affidavit, the AO has simply brushed aside the agreement without making any enquiry. The AO without examining either Shri G.V.K.Chowdary or the land owners has come to a conclusion that the documents were created to strengthen the

assessee's case which is based on surmises without having any evidence. Any conclusion has to be drawn only after verification of the facts. The AO ought to have examined Shri G.V.K.Chowdary and the land owners to ascertain the fact regarding the payments, made directly or through the agent. The fact that the land owners were agriculturists and small farmers, insisted the cash payment was supported by the affidavits given by the land owners as seen from the assessment order. Therefore, we hold that there is no reason to disbelieve the submission of the assessee that the payment was made through the agent to the farmers, hence, there is no case for application of section 40A(3) of the Act. Apart from the above, all the recipients are identifiable and the payments were genuine. The department also did not dispute the genuineness of payment. Since the assessee has furnished the evidences supporting it's contentions, we hold that the case law relied upon by the assessee in the case of Sri K.Phani Kumar cited supra squarely applicable to assessee's case. Therefore, we hold that there is no reason to make the disallowance u/s 40A(3) of the Act and accordingly, we set aside the order of the Ld.CIT(A) and allow the appeal of the assessee.

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

Order pronounced in the open court on 8th November, 2019.

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|---|---|
| Sd/- (वी.दुर्गा राव) (V. DURGA RAO) | Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) |
| न्यायिक सदस्य/JUDICIAL MEMBER | लेखा सदस्य/ACCOUNTANT MEMBER |
| विशाखापटणम /Visakhapatnam | |
| दिनांक /Dated : 08.11.2019 | |
| L.Rama, SPS | |

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

1. निर्धारिती/ The Assessee - Priyanka Real Estates & Developers, D.No.25-1-3, J.K.Puram, Rajamahendravaram
2. राजस्व / The Revenue - Income Tax Officer, Ward-2(2), Rajamahendravaram
3. The Principal Commissioner of Income Tax, Rajahmundry
4. The Commissioner of Income Tax (Appeals), Tirupati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam