

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B - SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,  
ACCOUNTANT MEMBER

	ITA No.1248/Hyd/2018		
	Assessment Year: 2009-10		
Sri Nilaya Projects, Flat No. 106, Vijayasri Apartments, Opp. Kammasangam, Ameerpet, Hyderabad. PAN: ABEFS 2931 D	Vs.	Income Tax Officer, Ward-6(4), Hyderabad.	
(Appellant)		(Respondent)	

	ITA No.1249/Hyd/2018		
	Assessment Year: 2009-10		
Sri Nilaya A.R. Projects, Flat No. 106, Vijayasri Apartments, Opp. Kammasangam, Ameerpet, Hyderabad. PAN: ABEFS 6028 D	Vs.	Income Tax Officer, Ward-6(4), Hyderabad.	
(Appellant)		(Respondent)	
Assessee by:	Sri S. Rama Rao		
Revenue by:	Sri Nilanjan Dey, DR		
Date of hearing:	18/11/2019		
Date of pronouncement:	23/01/2020		

ORDER

Both these appeals are filed by the assessees against the orders of  
the Ld. CIT(A)-6, Hyderabad in appeal Nos. 0231 & 0233/2015-

16/B2/CIT(A)-6, dated 01/03/2018 passed U/s. 143(3) r.w.s 254 and U/s. 250(6) of the Act for the A.Y. 2009-10.

2. Both the assesseees are partnership firm engaged in the business as builder functioning from the same premises. Since the issues involved in both the appeals are identical, they are heard together and disposed off by this common order for the sake of convinence.

3. Both the assesseees have raised three identical grounds in their respective appeals however, the crux of the issues are as follows:

(i) The ld. CIT (A) has erred in confirming the addition made by the ld. AO for Rs. 5,11,400 and Rs. 7,79,400 in the case of both the assesseees respectively invoking the provisions of section 40A(3) of the Act being the payment made towards wages.

(ii) The ld. CIT (A) has erred in confirming the addition made by the ld. AO for Rs. 3,31,750 and Rs. 5,69,852 in the case of both the assesseees respectively invoking the provisions of section 40A(3) of the Act being the payment made towards purchase of materials.

4. Brief facts of the case are that both the assessee firms are engaged in the business of constructing and selling residential apartments, filed their return of income subsequent to the survey conducted U/s. 133A of the Act on 25/8/2008. Thereafter both the cases were taken up for scrutiny and assessments were completed on 30/09/2015 wherein the

above stated additions were made which were subsequently confirmed by the ld. CIT (A).

5. **Ground No.(i): Additions U/s. 40A(3) of the Act for payments made towards wages:**

5.1. During the course of scrutiny proceedings, it was observed by the Ld. AO that the assessee had incurred cash expenditure of Rs. 5,11,400 and Rs. 7,79,400 respectively which were categorized under labour charges. On query, it was explained by both the assesses that the aforesaid payments were made to daily labourers as their wages. However, the ld. AO opined that since the payments were made through Labour Mistry to whom bulk payments were made exceeding Rs. 20,000 by way of cash, provisions of section 40A(3) of the Act would be attracted and accordingly disallowed the expenditure as deduction. Before the ld. CIT (A), it was pleaded that Rule 6DD(k) would be applicable in the case of the assessee because the payments were made to agents. However, the ld. CIT (A) opined that Rule 6DD(k) will not be applicable in the case of the assessee and thereby confirmed the orders of the Ld. AO.

5.2 Before us the Ld. AR submitted that these payments were disbursed to daily labourers towards their wages for construction activity and therefore the provisions of section 40A(3) of the Act will not be applicable. The ld. DR on the other hand relied on the orders of the ld. Revenue Authorities.

5.3 After hearing both sides, I find merit in the submission of the ld. AR. In the construction activity wages are disbursed to daily labourers by the help of some reliable individuals. In such cases, it cannot be considered that the payments are made to those reliable individuals. Only for the purpose of disbursement, cash is handed over to such individuals. It is obvious that the partnership firm cannot conduct its activities by itself but only through the partners and the staff of the firm or through their representatives. Hence, it cannot be construed that the labour expenditure is incurred by way of cash payment to a single individual. Further, it is obvious that each and every labourer has received an amount not exceeding Rs. 20,000 by way of cash in a day in the case of the assesseees. Therefore, the provisions of section 40A(3) of the Act will not be attracted in the case of the assesseees. Hence, I hereby direct the ld. AO to delete the addition made for Rs. Rs. 5,11,400 and Rs. 7,79,400 in the case of M/s. Sri Nilaya Projects and M/s. Sri Nilaya A.R. Projects respectively.

6. **Ground No.(ii): Additions U/s. 40A(3) of the Act for payments made towards purchase of materials:**

6.1 During the course of scrutiny assessment proceedings it was observed by the ld. AO that the assesseees had made cash payment to a single person exceeding Rs. 20,000 in a day towards purchases of materials amounting to Rs. 3,31,750 and Rs.5,69,852 in the case of both the assesseees respectively. On query it was explained by the

assesseees that they had paid the amount during multiple occasions on a day and on each occasion the payment was less than Rs. 20,000. It was therefore, pleaded that provisions of section of section 40A(3) would not be attracted. However, the Ld. AO observed that the aggregate of the cash payments made in a single day to a person exceeded Rs. 20,000 and therefore, the provisions of section 40A(3) would be attracted. Accordingly, he disallowed the expenditure in the case of both the assesseees as allowable deduction. On appeal the ld. CIT (A) confirmed the orders of Ld.AO

6.2. At the outset, I find merit in the orders of the ld. Revenue Authorities in this issue because on the plain reading of the provisions of section 40A(3) it is clear that if the assessee makes aggregate payment exceeding Rs. 20,000 to a person in a day towards expenditure, provisions of section 40A(3) would be attracted. Therefore, we do not find it necessary to interfere with the orders of the Ld. Revenue Authorities on this issue. Hence, appeals filed by both the assessee on this ground is devoid of merits.

7. In the result, both the appeals of the assesseees are partly allowed.

Pronounced in the open Court on 23<sup>rd</sup> January, 2020.

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 23<sup>rd</sup> January, 2020  
OKK

## Copy to:-

- 1) Sri Nilaya Projects, Flat No. 106, Vijayasri Apartments, Opp. Kammasangam, Ameerpet, Hyderabad.
- 2) Income Tax Officer, Ward-6(4), IT Towers, AC Guards, Hyderabad.
- 3) The CIT(A)-6, 6A, IT Towers, AC Guards, Hyderabad
- 4) The Pr. CIT-6, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File