

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं
श्री एम. बाला गणेश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.3461/Chny/2019
निर्धारण वर्ष /Assessment Year: 2009-10

M/s.Mugundhan Projects P. Ltd.,
No.12/20, Nedunchezhin Street,
Nehru Nagar, Velachery,
Chennai-600 042.

Vs. The Dy. Commissioner of
Income Tax,
Corporate Circle-4(1),
Chennai.

[PAN: AAFCM 3266 N]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr. N.Arjun Raj, CA

प्रत्यर्थी की ओर से /Respondent by

: Mrs.Vijaya Prabha, JCIT

सुनवाई की तारीख/Date of Hearing

: 26.02.2020

घोषणा की तारीख /Date of Pronouncement

: 26.02.2020

आदेश / O R D E R

PER M. BALAGANESH, ACCOUNTANT MEMBER:

The assessee filed this appeal against the Order of the Commissioner of Income Tax (Appeals)-8, Chennai, in ITA No.60/17-18 dated 16.10.2019 for the AY 2009-10.

2. The Ground No.1 raised by the assessee is general in nature and does not require any specific adjudication.

3. The Ground No.2 raised by the assessee is challenging the validity of reopening of assessment u/s.147 of the Act. This ground was stated to be not pressed by the Ld.AR at the time of hearing before us. The same is reckoned as a statement made from the Bar and accordingly, the Ground No.2 raised by the assessee is dismissed as not pressed.

4. The Ground Nos.3-6 raised by the assessee are only challenging the action of the Ld.CIT(A) in confirming the disallowance made by the Ld.AO u/s.40A(3) of the Act to the extent of ₹53 lakhs.

5. We have heard the rival submissions and perused the materials available on record. We find that the assessee company is engaged in the business of real estate development. We find that the AO observed that the assessee has incurred expenditure in cash to the extent of ₹53 lakhs on 05.04.2008 (₹35 lakhs) and on 19.11.2008 (₹18 lakhs). As this sum was paid pursuant to the agreement of guarantee dated 19.11.2008, the Ld.AO sought to invoke the provisions of Sec.40A(3) of the Act to disallow the said sum as the same was incurred otherwise than by way of account payee cheque or account payee demand draft. The assessee company responded before the Ld.AO that it was not aware of the transaction recorded in the agreement. It was also pleaded that the said agreement was entered by the former Director of the assessee company Mr. R.Sasi Kumar without the knowledge of the assessee company and that the said Director had already left company during 2010 on account of certain difference of opinion and dispute. This fact was also mentioned and

confirmed by the present Director Mr.R.Thiruvengadam while furnishing the statement on oath u/s.131(1) of the Act before the Ld.AO on 17.03.2014. The Ld.AO, however, did not agree to the contentions of the assessee and observed that the said agreement of guarantee was entered in the name of the company and the same could not have been entered without the consent of the Board of Directors. Since, the said payment of ₹53 lakhs were made in cash, the Ld.AO proceeded to disallow the same u/s.40A(3) of the Act in the assessment, which was confirmed by the Ld.CIT(A) before us. The Ld.AR furnished the copy of return of income, statement of total income and financial statements for the year ended 31.03.2009 relevant to the AY 2009-10 of the assessee company. From the perusal of the P&L A/c, we find that the assessee had not claimed any expenditure as deduction to the tune of ₹53 lakhs, which was disallowed by the Ld.AO. The total expenditure debited to the P&L A/c of the assessee is ₹16,14,005/- comprising of administrative expenses of ₹9,51,095/- and depreciation of ₹6,62,910/-. The breakup of the administrative expenses to the extent of ₹9,51,095/-, are as under:

Employee Cost of ₹2,25,600/-

Particulars	31.03.2009
Bank charges	1572
Rent	540000
Telephones	51531
Audit Fees	16545
Accounts Outsourcing Fees	16545
Printing & Stationery	6240
Electricity Charges	21041
Interest on car loan	42130
Loan processing fees	12867
Office expenses	10124
Service & Maintenance	1000
Vehicle Maintenance	5000
Water charges	900

6. However, we find there is no reason recorded by the lower authorities in this regard in their respective orders. Hence, in the interest of justice, we deem it fit and appropriate, to remit back this issue to the file of the Ld.AO for adjudication in accordance with law with a specific direction to examine the financial statement of the assessee and decide the issue in accordance with law. The Ld.AO should decide the issue of disallowance u/s.40A(3) of the Act by giving a categorical finding as to whether the assessee has claimed any deduction in respect of payment of ₹53 lakhs. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on the 26th day of February, 2020, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(एम. बाला गणेश)
(M. BALAGANESH)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 26th February, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF