

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2159/Del/2015
(Assessment Year: 2011-12)

Mega Infraprojects pvt. Ltd, M-11, Middle Circle, Connaught Circus, New Delhi PAN: AAGCM0823Q	Vs.	ACIT, Central Circle-32, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Ajay Bhagwani, CA
Revenue by:	Ms. Pramita M. Biswas, CIT DR
Date of Hearing	11/02/2020
Date of pronouncement	15/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the ld CIT(A) XXX, New Delhi dated 29.12.2014 for the Assessment Year 2011-12.
2. The assessee has raised the following grounds of appeal:-
 - “1. *That on the facts and circumstances of the case and in law the ld CIT(A) erred in sustaining the disallowance of Rs. 12,30,000/- u/s 40A(3) of the IT Act despite the fact that no deduction in respect of said sum was claimed in the computation of income from business or in the Profit and Loss account.*
 2. *That the orders passed by the Assessing Officer and Commissioner of Income Tax (Appeals)-XXX, New Delhi are bad in law and void ab initio.”*
3. Brief facts of the case shows that assessee is a company, filed its return of income on 24/9/2011 declaring loss of ₹ 1 5649/-. Search and seizure operation was carried out at the various premises of the BPTP Ltd and its group concern and associated person on 7/12/2010 which was finally concluded on 5/2/2011. The case of the assessee was picked up for scrutiny. The assessment under section 143 (3) of the act was passed on 28/3/2013 wherein one of the disallowances, which is contested in this

appeal of ₹ 1 230000/- was made under section 40A (3) of the income tax act. This is the only dispute in this appeal.

4. During the course of assessment proceedings the AO noticed that the assessee company has acquired various land from farmers and on perusal of the details of payment made by the assessee company for acquiring the land from farmers, it has been noted that assessee has made part payment of total sale consideration in cash of ₹ 1 230000/-. As the above sum was paid in cash, AO noted that it is in contravention of provisions of section 40A (3) of the act. The assessee explained that entire expenditure was incurred for the purchase of land which was reimbursed by Countrywide promoters private limited. The above expenditure has not been debited in the profit and loss account and no expenditure incurred on purchase in cash was debited or claimed by the assessee as deduction. It is the reimbursement of the cost for the purchase of land as per the collaboration agreement. The learned assessing officer rejected the contention of the assessee. He held that above payment has been made in contravention of the provisions of section 40A (3) and is not covered by the exceptions referred to in rule 6DD of the income tax rules 1962. He therefore disallowed 100 % of the above cash payment.
5. The assessee preferred an appeal before the learned CIT – A who also confirmed the above disallowance.
6. The learned authorised representative submitted that identical issue has been considered by the coordinate benches in the group concerns wherein it has been held that if the expenditure has not been debited to the profit and loss account but is reimbursed by the another company, there is no claim made by the assessee as an expenditure as none of these expenditure has entered into the profit and loss account, therefore the provisions of section 40A (3) of the income tax act does not apply to the same. The assessee submitted a list of such 29 orders passed by the coordinate benches on identical facts and circumstances deleting the above disallowance.
7. The learned authorised representative reiterated the findings of the lower authorities.

8. We have carefully considered the rival contention and perused the orders of the lower authorities. Undoubtedly, the issue is decided by the coordinate benches in almost 29 cases of the group concerns where the identical disallowance under section 40A (3) of the income tax act has been deleted. On perusal of the most of the decisions, it is found that the coordinate benches have followed the decision passed by the coordinate bench in ITA number 1752/del/2013 dated 22/8/2014 in case of M/s West land developers private limited versus Assistant Commissioner Of Income Tax. The learned departmental representative could not show us the reason that why should we deviate from the orders of the coordinate benches. Even otherwise, judicial discipline requires that unless those orders are upset, same should be followed. Therefore respectfully following the decision of the coordinate benches, we direct the learned assessing officer to delete the disallowance as under section 40A (3) of the act of ₹ 1 230000/-. Accordingly, ground number one of the appeal of the assessee is allowed.

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

Order pronounced in the open court on 15/05/2020.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 15/05/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi