

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.1081/Bang/2017
Assessment Year : 2012 - 13

M/s KVR Holdings, 443, 44 th Cross, 2 nd Main, Jayanagar 8 th Block, Bengaluru-560 011.	Vs.	The Income Tax, Ward-7(2)(4), Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Ashok K Kulkarni, C.A
Respondent by	:	Shri Priyadarshi Mishra, JCIT

Date of Hearing	:	14-09-2020
Date of Pronouncement	:	06-10-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 22/02/2017 passed by Ld. CIT (A)-7, Bangalore for assessment year 2012-13 on following grounds of appeal:

- “1. The order of the Hon'ble Commissioner of Income Tax (Appeals) - 7 is opposed to law and facts of the case.*
- 2. The Hon'ble Commissioner of Income Tax (Appeals) - 7 ought to have held that the provisions of Section 40A (3) of the Act are not applicable in the facts and under the circumstances of the present case.*
- 3. The Hon'ble Commissioner of Income Tax (Appeals) - 7 erred in holding that the payment is made in a sum of Rs. 86,50,000/- are in violation of the provisions of Section 40A (3) of the Act.*

4. The Hon'ble Commissioner of Income Tax (Appeals) - 7 ought to have held that the appellants case squarely falls within the exceptions provided under Rule 6BB of the Income Tax Rules.

5. The levy of the interest U/s 234A, 234B and 234C is bad in law.

6. The appellant craves for leave to add or delete from or amend the grounds of appeal.

Brief facts of the case are as under:

2. Assessee is a firm and is in the business of construction. During the year under consideration it filed its return of income declaring total income of Rs.6,65,100/- on 30/09/2012. The case was taken up for scrutiny and notice under section 143 (2) and 142 (1) of the Act, was issued in response to which, representative of assessee appeared before the Ld. AO and filed requisite details as called for.

3. Ld.AO noted that during the year, assessee purchased a property for Rs.1,65,59,200/- including stamp duty and had debited the same to the trading account to claim expenditure.

Ld.AO noted, from sale deed that assessee paid sum of Rs.86,50,000/- in cash, which was in violation of section 40A(3) of the Act. Assessee was called upon to furnish details, as to why the same should not be disallowed under section 40A(3) of the Act. As no submissions were made by assessee, till the date of passing of assessment order, Ld.AO made disallowance of Rs.86,50,000/-under section 40A(3) of the Act.

4. Aggrieved by addition made, assessee preferred appeal before Ld.CIT(A).

5. Before Ld.CIT(A) assessee submitted that, property was purchased at Belekahalli Village, Begur Hobli, vide sale deed dated 16/03/2012, for sale consideration of Rs.1,50,00,000/-. It

was submitted that, the vendor also insisted some cash to be paid to his sister, who was claiming right of share in the property purchased by assessee. Assessee thus paid Rs.44,50,000/- in cash to the vendor. Another sum of Rs.42,00,000/- was paid to confirming party in cash. The reasons for making payment to the confirming party was submitted by written submission filed by assessee before Ld. CIT (A).

6. Ld. CIT (A) however rejected the contentions of assessee and confirmed addition made by Ld. AO by observing as under:

“4.9 In the instant case, there are no circumstances available to the appellant to claim the exceptions provided in Rule 6DD of I.T. Rules. The payments were made in cash to the vendor without any express demand of payment in such nature and the shelter of agreement between the vendor and confirming party and others cannot be treated as compelling reasons for the appellant to pay in cash to the vendor. lithe Appellant would have paid these amounts in the manner prescribed under section 40A(3) of the. Act, there was always an occasion available with the vendor to withdraw cash from his own account and pay in cash to the parsons with whom he has agreed independently.”

7. Aggrieved by order of Ld. CIT (A) assessee is in appeal before us now.

8. Ld.AR submitted that, only issue alleged in present appeal is in respect of disallowance made under section 40A(3) of the Act. At the outset, he placed reliance on certificate filed along with paper book, wherein, he submitted that, documents placed at serial No.5 and 6, being copies of cheque-book extract and copy of records left placed at page 58-61 are filed for the 1st time

passed by *Hon'ble Karnataka High Court* in case of *M/s AK Agro Tech Pvt. Ltd vs ACIT* in ITA No. 33/2010.

9. On the contrary, Ld.Sr.DR, relied on order passed by Ld.CIT(A).

10. We have perused submission advanced by both sides in light of records placed before us. We note that assessee has filed application for admission of additional evidence under R.29 comprising of documents which were not there before Ld.AO/CIT(A). It has been submitted that these documents would be relevant to decide the issue in hand. In the interest of justice we deem it proper to revert the issue to Ld.AO for consideration. Assessee is directed to furnish all relevant details/explanation to satisfy the requirement to come out of rigors of sec.40A(3). Ld.AO shall consider relevance of these documents submitted by assessee, and the same may be admitted in accordance with law. Ld.CIT(A) shall verify these documents and carry out any further investigation as he may deem fit and proper in accordance with law.

Accordingly, grounds raised by assessee stands allowed for statistical purposes.

In the result appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 6th Oct, 2020

Sd/-
(B. R. BASKARAN)
Accountant Member
Bangalore,
Dated, the 6th Oct, 2020.

Sd/-
(BEENA PILLAI)
Judicial Member

/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-10-2020		Sr.PS
3.	Draft proposed & placed before the second member	-10-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-10-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-10-2020		Sr.PS/PS
6.	Kept for pronouncement on	-10-2020		Sr.PS
7.	Date of uploading the order on Website	-10-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-10-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS