

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 1110/DEL/2019 ( A.Y 2013-14)  
(THROUGH VIDEO CONFERENCING)**

Star Realcon Pvt. Ltd. 1010, Faiz Road, Karol Bagh, New Delhi AAJCS9555L <b>(APPELLANT)</b>	Vs	ITO Ward-24(2) Room No. 236, C. R. Building, New Delhi 110002 <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Rohit Tiwari, Adv</b>
<b>Respondent by</b>	<b>Sh. Ajay Kumar, Sr. DR</b>

<b>Date of Hearing</b>	<b>11.01.2021</b>
<b>Date of Pronouncement</b>	<b>21.01.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 28/01/2019 passed by CIT(A)-XXV, New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

- 1 *“That on the facts and in the circumstances of the case and in law, the order passed by Ld. Commissioner of Income Tax (Appeals)-25, Delhi is bad both in eyes of law and on facts.*
- 2 *That on the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals)-25, Delhi has erred in confirming the disallowance of Rs. 10, 00,000/- made by AO on account of cash payment made for purchase of land at Ghaziabad, U.P. invoking the provision of*

*section 40A(3) of the Act ignoring the fact that land shown in 'non-current investment' in Audited Financial Statements.*

3 *That on the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals)-25, Delhi has erred in confirming the disallowance of Rs. 10,00,000/- made by AO on account of cash payments made against the purchase of land at Bhiwadi, Rajasthan invoking the provision of section 40A(3) of the Act ignoring the fact that the payment made in cash on 'Sunday' which is exempt under Rule 6DD of the Income Tax Rules, 1962.*

4 *That on the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals)-25, Delhi has erred in confirming the disallowance of Rs. 20,00,000/- despite the facts that these payments having been made out of business expediency as the appellant is engaged in Real Estate Business.*

5 *That on the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals)-25, Delhi has erred in confirming the disallowance of Rs. 20,00,000/- despite the fact that there being no doubt as to the genuineness of transactions as such no disallowance should have been made under the provision of section 40A(3) of Act.”*

3. The assessee company is a private limited company duly registered with ROC NCT of Delhi and Haryana. The assessee's carrying on the business of construction of residential houses/flats, commercial buildings etc. The assessee filed its return of income on 30/9/2013 declaring NIL income. In the computation of income after setting off of brought forward unabsorbed depreciation to the extent of Rs. 9,45,763/-, the Assessing Officer assessed the income of the assessee at Rs.22,88,072/-. The Assessing Officer disallowed cash payments towards purchase of land u/s 40A (3) of

the Income Tax Act, 1961 amounting to Rs. 20 lacs (Rs. 10 lacs out of Rs. 3.36 crores and Rs. 10 lacs out of Rs. 12.87 crores). The Assessing Officer also disallowed Rs. 2,88,072/- u/s 14A of the Act.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) erred in confirming the disallowance of Rs. 10 lacs made by the assessee on account of cash payment towards purchase of land at Ghaziabad, UP under the provisions of Section 40A(3) of the Act thereby ignoring the fact that land is shown in non current investment in the audited financial statements and not claimed as expenditure in P & L account. The Ld. AR further submitted that the CIT (A) erred in confirming the disallowance of Rs.10 lacs made by the assessee on account of cash payments made against the purchase of land at Bhiwadi, Rajasthan, invoking the provisions of Section 40A(3) of the Act ignoring the fact that the payment made in cash on Sunday which is exempt under Rule 6DD of the Income Tax Rules, 1962. The Ld. AR further submitted that the CIT(A) erred in confirming the disallowance of Rs. 20 lacs despite the fact that these payments having been made out of business expediency as the assessee is engaged in real estate business. The Ld. AR further submitted that there was no doubt created by the Assessing Officer as to the genuineness of the transaction. Therefore, no disallowance should

have been made in the provisions of Section 40A(3) of the Act. The Ld. AR relied upon various decisions which are as follows:

- i) Kalyan Constructions vs. ITO (ITA No. 2113/Hyd/2017 order dated 31.07.2018 Hyderabad Bench)
- ii) DCIT vs. M/s Brilliant Sare Reality Pvt. Ltd. (IT(SS)A No. 44/Ind/2015 order dated 28.12.2018 Indore Bench)
- iii) Prima Infra Developers Pvt. Ltd. vs. ITO (ITA No. 7144/Del/2017 order dated 27.06.2018 Delhi Bench)

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. From the perusal of the assessment order as well as the CIT(A) both the Revenue Authorities have not given any reason as to why Section 40A(3) will be applicable along with Rule 6D (J). In-fact, both the Revenue Authorities have not disputed the identity of the sellers as well as the purchase /sale deed between the parties and the assessee, but whether the payments were bonafide and the consideration of a genuine transaction was properly disclose by the assessee during the assessment proceedings as well as the appellate proceedings is also not specified in both the Revenue Authorities orders. The submissions of the Ld. AR that the cash payments were made on Sunday's which is a non-banking day but the assessee from the records has not shown as to what was the necessity to make payment on

Sundays. Thus, the Revenue Authorities as well as the assessee has not clearly stated their respective cases u/s 40A(3) read with Rule 6DD(J), it will be appropriate to remand back this matter to the file of the Assessing Office for allowing the assessee to establish as to why the payments were made on Sundays and why the applicability of Section 40A(3) does not arise in assessee's case when land shown in non current investment in the audited financial statements which is not claimed as expenditure in P & L account. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Thus, the appeal of the assessee is partly allowed for statistical purpose.

8. In result, the appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the Open Court on this 21<sup>st</sup> day of JANUARY, 2021.**

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Dated: 21/01/2021  
R. Naheed

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

