

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 148/VIZ/2020
(Asst. Year : 2012-13)**

Mohammed Ali Shaik,
D.No. 74-32/2-9B,
Pandaripuram, 4th Line,
Patamata, Vijayawada.

Vs.

Income Tax Officer
Ward-2(4)
Vijayawada.

PAN No. BERPS 5580 P
(Appellant)

(Respondent)

Assessee by : Shri C.Subrahmanyam, FCA
Department by : Smt.Suman Malik, DR

Date of hearing : 17/03/2021.
Date of pronouncement : 07/04/2021.

ORDER

PER N.K. CHOUDHRY, JUDICIAL MEMBER

This appeal has been preferred by the Assessee against the order dated 24/12/2019 impugned herein passed by the Id. Commissioner of Income Tax (Appeals) [for short, "Id. Commissioner"], Vijayawada u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2012-13.

2. In this case, the only issue in controversy relates to the affirmation of partly disallowance of Rs. 28,61,410/- u/s section 40A(3) of the Act, by the Ld. Commissioner.

3. Facts of the case in brief are that Assessee being an individual claimed to have been carrying on business of real estate and during the year under consideration, purchased some agricultural lands on cash basis, developed into plots, converted into stock-in-trade and later on sold and admitted profit on sale of such plots and hence the provisions of section 40A(3) were not applicable. However, the AO did not get impressed and made the disallowance of Rs. 1,35,87,225/- u/sec. 40A(3) of the Act and consequently made the addition.

4. Aggrieved against the order of the AO, the Assessee challenged the said addition before the Id. Commissioner, wherein the Assessee filed the additional evidences by way of confirmation letters of the sellers qua 05 transactions of purchase of agricultural lands during the year out of total 08 transactions. It was also claimed by the Assessee that the agriculturists insisted on payment of consideration in cash as they do not have any bank accounts. The said additional evidences were forwarded to the AO with a request to examine the same and to furnish the remand report, in response to which, the AO while following the directions of Ld. Commissioner sought confirmation letters from all the sellers and held necessary enquiries by deputing ITI who confirmed the identity of the sellers and the AO submitted in the Report that cash purchases are inevitable and thus prove the business expediency in this case. For the sake of brevity and ready reference, remand report dated 31/07/2017 is reproduced below:-

“In the assessment proceedings finalized u/s 143(3) vide order dated 30-03-2015 added among other things, 1,35,87,225/- as a disallowance u/s 40(A). The amount of addition represented the amount utilized for cash purchase of agricultural lands for the purpose of utilizing such land in real estate business. The actual amount involved is Rs. 1,36,70,410/ against which the AO added a sum of Rs. 1,35,87,225/- presumably due to inadvertence.

As directed, confirmation letters were obtained from the sellers of agricultural land to the extent of Rs. 1,32,79,000/-. The ITI of this office has been deputed for causing necessary enquiries and submissions of a report. The ITI has confirmed the Identity of the sellers. **It is general practice that agriculturists always insist on cash payment and on account of lack literacy they do not approach banks excepts perhaps.** From the facts narrated in his letter and from the Report of the FT, it is dear that **there is business expediency in the said cash payments and that the sellers are agriculturists and the sellers have insisted on cash payment.** The sellers have specifically stated that cheques are not reliable and that the reason why they have insisted upon cash payments. In the light of these facts, the assessee could not have carried the business but or the cash payments for purchase of lands which were initially acquired as an investment and then after obtaining necessary land conversion, these lands were introduced as stock in trade and then put to sale. In this view of the matter, it is submitted that **the cash purchases are inevitable and thus prove the business expediency in this case.** The appeal may be decided accordingly.”

4.1 The Id. Commissioner, while relying upon the remand report wherein the business expediency was accepted by the AO, deleted the disallowance to the tune of Rs. 1,08,09,000/- qua 05 agriculturists/sellers, out of total cash payment of Rs.1,35,87,225/- by observing in para no. 31 of its order as under:-

The sellers as mentioned, are ordinarily residing at Edupugallu Village as is evident from the recitals in the relevant registered documents through which the Assessee purchased the agricultural lands from the said persons and the enquiry report of the Inspector during the remand proceedings. Therefore, it is seen that the exception laid down under rule 6DD(g) of the I.T. Rules is clearly applicable to the cash payments of Rs. 1,08,09,000/-. Hence, the said cash payments are not liable for disallowance u/sec. 40A(3) of the Act.

4.2 However the Id. Commissioner sustained the remaining addition by observing:

That as regards the balance cash payment of Rs.24,70,000/- made towards purchase of agricultural lands and cash payment of Rs. 3,91,410/- made towards purchase of vacant site, it is seen that

the said payments are not covered any of the exceptions laid down in rule 6DD, therefore, the said cash payments aggregating to Rs. 28,61,410/- are liable for disallowance u/sec. 40A(3) of the Act.

5. The Assessee challenged the impugned order before tribunal and in support of appeal, Id. AR Shri C. Subrahmanyam vehemently argued as claimed before the authorities below. Further during the argument, Mr. Subrahmanyam fairly conceded that the Assessee is not insisting on the confirmation of addition to the extent of Rs. 3,91,410/- qua cash payment made towards purchase of vacant site.

6. On the other hand, Id. DR relied upon the order of the Id. Commissioner.

7. We have heard the parties and perused the material available on record and the orders of the authorities below. In view of the remand report submitted by the AO, the Id. Commissioner out of disallowance of Rs. 1,35,87,225/- which was made by the AO while applying the provisions of section 40A(3), deleted the disallowance of Rs. 1,08,09,000/- by holding as under:-

“29. Another contention advanced by the assessee by raising the additional ground of appeal is that the cash payments made by the assessee to the farmers towards purchase of agricultural lands are covered by the scope of the exception laid down rule 6DD(g) and the disallowance u/s. 40A(3) is therefore no applicable to the said payments. It was stated that out of the cash payments of Rs.1,32,79,000/- made towards purchase of agricultural lands, cash payments to the extent of Rs.1,08,09,000/- were made towards purchase of agricultural lands from the persons who are residing in Edupugallu Village, which did not have any banking facility at the relevant point of time when the payments were made to them and that the said payments are covered by the scope of the exception laid down rule 6DD(g). The assessee furnished additional evidence by way of copies of paper clippings and letter of the Sr.Branch Manager of Andhra Bank, Tadigadapa in order to show that the branch of Andhra Bank at Edupugallu was established in the year 2015

only and there is no other bank in the said village.

30. In this regard, it is seen that rule 6DD(g) lays down the exception to the applicability of the provisions of sec. 40A(3) to a payment which is made in a village or town to any person who ordinarily resides in such village or town, which is not served by any bank on the date of such payment. In the case of the assessee, cash payments were made to the following sellers of agricultural lands, who are ordinarily residing at Edupugallu Village:

Sl. No.	Date of Purchase	Document No.	Nature of land	Party Name	Consideration Amount (Rs.)
1.	30.09.2011	4882/11	Agricultural	T.Sriramamurthy T Kanakadurga & T.Siva naga Malleswara	958500
2.	30.09.2011	4878/11	Agricultural	M. Bhaskar	1310000
3.	26.08.2011	4252/11	Agricultural	M.Bhaskar	1900000
4.	21.11.2011	5292/11	Agricultural	M.Bhaskar	3714500
5.	05.12.2011	6114/1	Agricultural	M.Bhaskar	2926000
Total					108,09,00

31. After examining the additional evidence furnished by the assessee for the purpose of establishing that **Edupugallu Village was not served by any bank during the year under consideration and that the Andhra Bank branch at Edupugallu was established subsequently in the year 2015**, the AO stated in the remand report that the contention of the assessee is factually correct. Further, the fact that the above mentioned sellers of the land are ordinarily residing at Edupugallu Village is evident from the recitals in the relevant registered documents through which the assessee purchased the agricultural lands from the said persons and the enquiry report of the Inspector during the remand proceedings. It is therefore seen that the exception laid down rule 6DD(g) is clearly applicable to the cash payments of Rs.1,08,09,000/- made towards purchase of agricultural lands. Hence, it is held that the said cash payments are not liable for disallowance u/s. 40A(3) of the Act.

32. As regards the balance cash payments of Rs.24,70,000/- made towards purchase of agricultural lands and cash payment of Rs.3,91,410/- made towards purchase of vacant site, it is seen that the said payments are not covered by any of the exceptions laid down in rule 6DD. It is therefore held that the said cash payments aggregating to Rs.28,61,410/- are liable for disallowance u/s. 40A(3).

33. In view of the aforesaid discussion, the disallowance of purchase expenditure made u/s. 40A(3) is hereby sustained to the extent of Rs.28,61,410/-. The AO is directed to delete the

remaining disallowance of Rs.108,09,000/- made u/s 40A(3) of the Act. The additional ground of appeal is therefore partly allowed.”

7.1 It appears from the impugned order that the Id. Commissioner deleted the addition of Rs. 1,08,09,000/- qua 05 agriculturists who are residing in the village wherein there was no bank facility available during the period of transactions, however, sustained the addition of Rs. 24,70,000/- and Rs.3,91,410/- made cash payments towards purchase of agricultural lands and vacant site respectively, on the ground *that the said payments are not covered by any exception laid down in rule 6DD and therefore the said cash payments aggregating to Rs.28,61,410/- are liable for disallowance u/ sec. 40A(3) of the Act.*

7.2. Let us to peruse the provisions of Rule 6DD of the Income Tax Rules, 1962 which are as follows:-

“Rule 6DD – No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely:-

- (a) xxxxxxxxxxxxxx
- (b) xxxxxxxxxxxxxx
- (c) xxxxxxxxxxxxxx
- (d) xxxxxxxxxxxxxx
- (e) where the payment is made for the purchase of-
 - (i) **agricultural or forest produce**; or
 - (ii) the produce of animal husbandary (including livestock, meat, hides and skins) or dairy or poultry farming; or
 - (iii) fish or fish products; or
 - (iv) the products of horticulture or apiculture,
To this cultivator, grower or producer of such articles, produce or products

Rule 6DD lays down certain exceptions, under which *no disallowance under sub-section (3) of section 40A shall be made*, which

include Rule 6DD (e) (i) which covers the **payment made for the purchase of agricultural or forest produce.**

7.3 Here in this case, this is un-controversial fact that the lands sold were agricultural lands and the sellers were agriculturists and their identity are also not in dispute and the payments in cash except Rs. 3,91,410/-, were also made for the purchase of agricultural lands only, because it clearly reflects from the remand report that the AO through ITI thoroughly investigated the matter by making elaborate enquiry and not only confirmed the identity of the sellers but also clarified *that it is general practice that agriculturists always insist on cash payments and on account of lack of literacy they do not approach the banks except perhaps. From the facts narrated in the report of the ITI, it is clear that there is business expediency in the said cash payments and the sellers are agriculturists and have insisted on cash payments.* It was further mentioned in the remand report *that the sellers have specifically stated that cheques are not reliable and that the reasons why they have insisted upon cash payments. In the light of these facts, the Assessee could not have carried the business but or the cash payments for purchase of lands which were initially acquired as an investment and then after obtaining necessary land conversation , these lands were introduced as stock in trade and then put to sale.* In the remand report, it was finally submitted *that cash purchases are inevitable and thus prove the business expediency in this case.*

7.4 From the record and arguments raised by the parties, we could not get any contrary facts and/or material against the remand report and/or admission of the AO with regard to business expediency and insistence of the sellers on cash payments.

7.5 The Co-ordinate bench of the Tribunal in the case of ITO Vs. Smt. Jalumuri Rama Lakshmi in ITA No. 242/VIZ/2015 dated 28/07/2017

also dealt with an identical issue and upheld the deletion of addition made u/sec. 40A(3) of the Act by holding as under:-

“7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee has made the payments for purchase of the land in cash for ` 26,50,000/- to the seller and a sum of ` 51.00 lakhs was made to the developer. The fact that the land was purchased and got developed by the assessee was not disputed by the A.O. The Ld. CIT(A) deleted the addition placing reliance on the decision in the case of PSL Limited Vs. ACIT and CIT Vs. Vijay Kumar Goel, wherein the principle followed in both the cases was the disallowance is not warranted when the transaction is genuine and the identity of the payer is not doubted apart from the applicability of rule 6DD(h) & 6DD(a)(iv). The CIT(A) has given a finding that a sum of ` 26,50,000/- was paid in cash and recorded in the registered sale document dated 26.5.2007 and acknowledged by the vendor. The photo identity of the vendor also available in the said document, with regard to the payment of ` 51 lakhs, the CIT got it enquired through the A.O., and the assessing officer report shows that recipient M/s. Siri Constructions has accounted this amount in the books of accounts and declared his return of income. The intention of the legislature for inserting section 40A(3) of the Act is to plug the loophole of tax evasion by making the payments in cash. Once it is established that the payment is genuine and the recipient has admitted the payment in their income return, the purpose of 40A(3) of the Act is complied with. Therefore, the courts have held in such circumstances the rigor of the provisions needs to be interpreted liberally when the payment is genuine and the payee is identifiable. In this case, there is no doubt regarding the payee and payer and the Ld. CIT(A) also has given a finding that the payee in the case of Siri Constructions has admitted the amount in their returns. Hon’ble A.P. High Court in the case of Sri Lakshmi Satyanarayana Oil Mill Vs. CIT (2014) 49

Taxmann.com 363 held that the provision must be interpreted liberally and the assesseees cannot be subjected to undue rigor. Therefore, in the instant case, the payments are said to be genuine and the payees are identifiable and the recipients have admitted the receipts in the income. Therefore, we do not find any infirmity in the order of the Ld. CIT(A) and the same is upheld and the appeal of the revenue is dismissed.”

7.6 On the aforesaid facts and circumstances and respectfully following the Co-ordinate Bench decision, the decision of the Id. Commissioner qua sustenance of addition to the extent of Rs. 24,70,000/- as cash payment made towards purchase of agricultural lands, which was added by the AO u/sec. 40A(3) of the Act, is liable to be set aside. Consequently, the addition of Rs.24,70,000/- stands deleted.

8. The Assessee has not insisted on the confirmation of addition to the extent of Rs. 3,91,410/- qua cash payment made towards purchase of vacant site, hence the affirmation of the said disallowance by the Ld. CIT(A) does not warrant any interference.

9. In the result, appeal filed by the Assessee stands partly allowed.

Order Pronounced in open Court on this 07th day of April, 2021.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(N.K. CHOUDHRY)
Judicial Member

Dated: 07th April, 2021.

vr/-

Copy to:

1. *The Assessee - Mohammed Ali Shaik, D.No. 74-32/2-9B, Pandaripuram, 4th Line, Patamata, Vijayawada.*
2. *The Revenue – Income Tax Officer, Ward-2(4), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.