

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

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री जी. मंजूनाथा, लेखा सदस्य के समक्ष
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2119/Chny/2018
निर्धारण वर्ष /Assessment Year: 2013-14

M/s.Iniya Illam Constructions,
No.55, Chitlapakkam Main Road,
Mahalakshmi Nagar,
Rajakilpakkam, Chennai-600 073.
[PAN: AABFI 4753 P]

(अपीलार्थी/Appellant)

v. The Asst. Commissioner of
Income Tax,
Non-Corporate Ward-13,
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.G. Baskar, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.G. Johnson, Addl.CIT
सुनवाई की तारीख/Date of Hearing : 12.01.2022
घोषणा की तारीख /Date of Pronouncement : 25.01.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-10, Chennai, dated 21.05.2018 for the AY 2013-14 against the order passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "Act").

2. The assessee has raised the following grounds of appeal:

1. The order of the learned Commissioner of Income Tax (Appeals) is against the provision of section 40A (3) r.w rule 6DD read with the facts of the case.

2. The Commissioner of Income Tax (Appeals) failed to note that payment towards land was made on 22-07-2011, which was not during the relevant Assessment year i.e. 2013-14 (FY 2012-13)

3. The Commissioner of Income Tax (Appeals) failed to consider the fact that the payment of consideration was paid on 22/07/2011 by one of the partners Mr.

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Mahesh in his individual capacity from and out of his funds and not out of the funds of the Firm.

4. The Commissioner of Income Tax (Appeals) had failed to consider the submission of the appellant that the appellant firm had paid a sum of Rs.20,00,000 as Demand draft and the payment in cash by the partner was entered into books of accounts of the appellant firm by way of Journal entry dated 18-07-2012 which makes it clear that there is no payment of cash during the assessment year warranting disallowance u/s.40A (3).

5. For these and other reasons that may be adduced at the time of hearing it is prayed that the Honourable Income Tax Appellate Tribunal may be pleased to direct the Assessing officer to delete the disallowance made u/s 40A(3) and render justice.

3. The brief facts of the case are that the assessee is engaged in the business of civil construction and plots promotion. The return of income for the AY 2013-14 was filed on 21.09.2013, admitting a taxable income of Rs.32,38,990/-. The case was selected for scrutiny under CASS and Notice u/s.143(2) dated 02.09.2014 followed by Notice u/s.142(1) dated 23.07.2015 along with Questionnaire were issued and duly served on the assessee. The assessee has purchased a property for Rs.35 lakhs at Manavalan Nagar and power of attorney was executed in his favour. The consideration for the purchase of property was paid by one of his partner to the extent of Rs.15 lakhs by way of cash and Rs.20 lakhs was paid by way of Demand Draft by the assessee's firm during the AY 2012-13.

4. During the AY 2013-14, the assessee by way of journal entry dated 18.07.2012 accounted for the land as contract expenditure and debited to the P&L A/c to the extent of Rs.15 lakhs by crediting the Current A/c of the Partner Mr.N.Mahesh. The Id.AO noticed cash payment of Rs.15 lakhs during the scrutiny proceedings and disallowed the same u/s.40A(3). The Id.AO also stated that Rule 6DD cannot be applied for this transaction.

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5. Aggrieved by the order of the Id.AO, the assessee preferred an appeal before the Ld.CIT(A). The Ld.CIT(A) after accepting the submissions and hearing from the assessee, confirmed the findings of the Id.AO.

6. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us. The Ld.AR for the assessee vehemently argued that the provisions of Sec.40A(3) cannot be applied in this case since the payment is made by the partner on behalf of the firm in the earlier assessment years. He also argued that the transfer of the asset to the firm was made during the subsequent AY i.e. 2013-14 and hence, no cash payments have been made by the assessee's firm during the AY 2013-14. The Ld.AR also produced ledger extracts disclosing the Current A/c of the partner and payment of cash to the partner for the amount of purchase of land paid by the partner in the AY 2012-13.

7. The Ld.DR depended upon the order of the Ld.CIT(A) and argued that the payment made by the partner on behalf of the firm, which is an afterthought contravention of Sec.40A(3).

8. We have heard the rival contentions and perused the records. The issue in the present appeal is with regard to the disallowance of Rs.15 lakhs u/s.40A(3) by the Id.AO and confirmed by the Ld.CIT(A). The assessee's firm which made a payment of Rs.20 lakhs by way of Demand Draft has accounted the transaction as work in progress (opening) for the year P&L A/c during the AY 2013-14. In addition, the payment of Rs.15 lakhs was

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debited to P&L A/c – contract expenditure and credited to the Current A/c of the partner. The Ld.CIT(A) in his order stated that the amount of Rs.15 lakhs was liable for disallowance u/s.40A(3) as the said transaction does not fall under Rule 6DD. The Ld.CIT(A) in Para No.5.3.9 observed as follows:

5.3.9 Further it was also contended that the firm did not make any cash payment by itself and that during A Y 2013-14 the property was transferred to the appellant firm by book entries by crediting the partner's account to the extent of consideration paid by him to the vendors and therefore, since it is only an addition to capital of the partner by way of credit to his current account merely by way of journal entry in the books of the firm the disallowance cannot be attracted under these circumstances. In this regard, it is hereby held that, as stated earlier, the said cash payments on behalf of the firm. Further, it is also to be noted that the payment of Rs.20 lakhs made by the firm to the vendor in A Y 2012-13 was never booked as a loan or advance given to its partner in its books to support the claim that the purchase of land was made by the partner initially with an intention to purchase in his individual capacity as alleged. Further, the AR was also unable to justify as to why the partner himself could not pay the balance amount of Rs.20 lakhs also from his own account when it was claimed that the partner initially wanted to invest in the land in his individual capacity. Or for that matter the AR was also unable to establish as to why no corresponding entries were recorded in the partner's capital account (debiting the current account) in the books of the appellant firm in that year (AY 2012-13] for the amount of Ra.20 lakhs made by the appellant firm to the vendor (DD payment) on behalf of the partner as alleged. On the other hand, the appellant firm contrary to the submissions of the AR, had reflected the payment of Rs.20 lakhs in its books as its own "Work-in-Progress" which negates the AR's contention that the partner had initially intended to purchase the land in his individual capacity. Also, as stated earlier, there is also no legal evidence adduced for the submission that the property was transferred by the partner to the appellant firm in the immediately succeeding year except for recording it as such by way of journal entries in the books of the appellant firm in A Y 2013-14. Therefore, I am of the opinion that these submissions are being made merely to circumvent the compliance of the provisions of S.40A(3) of the Act by the appellant firm.

9. In view of the above and considering the facts and circumstances of the case, we are of the opinion that the cash payment of Rs.15 lakhs by the partner of the Firm Mr.N.Mahesh even though paid in the earlier

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assessment years but debited to P&L A/c during the AY 2013-14 attracts the provisions of Sec.40A(3) and we hereby uphold the order of the Ld.CIT(A).

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on the 25th day of January, 2022, in Chennai.

Sd/-
(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 25th January, 2022.

TLN, Sr.PS

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

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