

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 306/JP/2020
निर्धारण वर्ष/Assessment Year : 2014-15.

M/s. Om Shiv Properties Pvt. Ltd., 12 Mill, Tonk Road, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 6(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAACO 7986 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sunil Gogra, C.A.

राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 19/10/2022

उदघोषणा की तारीख / Date of Pronouncement: 11/01/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order of Id. CIT(A)-2, Jaipur dated 22.01.2020 for the assessment year 2014-15. The assessee has raised the following grounds of appeal :-

1. That the addition u/s 40A(3) by Id. AO at time of passing of assessment by not considering the prevailing circumstances wherein appellant was forced to make payment in cash may please be declared as illegal.
2. That Id. CIT (A) has erred in not considering the additional evidences submitted on dt. 16.1.2020 in Office of CIT (A) through online e-filing portal vide document id no. ITBA/APL/SA/APL_2019-20/1023633515(1) dt. 16.1.2020 under Rule 46A wherein relevant evidences which corroborates the circumstances under which appellant was forced to make payment in cash have not been considered which may please be declared as illegal.

3. The due to medical problems and COVID-19 situation the appeal is being delayed submitted by 120 days which may please be condoned and case may please be heard on merits.
4. That the appellant craves leave to add, amend or alter any of the ground to this appeal with the request to allow to submit written submission at the time of hearing of appeal.

The assessee has raised two additional grounds as under :-

1. That facts of the case are that manual appeal against asstt. Order is filed by the appellant on dt. 14.12.2016 and that is within stipulated time allowed u/s 249 of IT Act i.e. within 30 days from the date of service of assessment demand order. But due to not having knowledge about e-filing of the same and manner of e-filing of same, it could not be submitted that time and which is finally e-filed on dt. 16.1.2020 vide e-filing acknowledgement no. 292118481160120. As the appellant was under bonafide impression that manual appeal filed on dt. 14.12.2016 is a valid appeal filed and thus no condonation of delay petition was submitted before CIT (A).
 2. That appellant wish to place strong reliance in the case of All India Federation of Tax Practitioners, Mumbai vs. ITO Mumbai (ITAT Mumbai Bench ITA No. 7134/Mum/2017) wherein identical issue about manual filing of appeal was discussed at length and it has been held by the Hon'ble Bench by placing reliance on the judgment of Hon'ble SC in the case of State of Punjab vs. Shyamlal Murari and Ors (AIR 1976 SC 1177) wherein it was held that "Courts should not go strictly by the rule book to deny justice to the deserving litigant as it would lead to miscarriage of justice. It has been reiterated by the Hon'ble SC that all the rules of procedure are handmaid of Justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is advance the cause of justice. Thus accordingly Hon'ble ITAT, Mumbai held that since the e-filing of appeal has not been done by the assessee and same is only a technical consideration and in case technical consideration and substantial justice are pitted against each other, then in that eventuality the cause of substantial justice deserves to be preferred and cannot be overshadowed or negative by such technical consideration".
2. There is a delay of 202 days in filing the present appeal. In support of condonation of delay, an Affidavit of Shri Phool Chand Chaudhary, Executive Director

of assessee company along with an application dated 28.10.2020 under section 5 of Limitation Act, 1963 has been filed, which reads as under :-

Application U/s 5 of Limitation Act, 1963.

1. That the appellant is submitting appeal against order passed by CIT (A) vide order dt. 28.11.2016 wherein addition made in disallowance of cash payment of Rs. 2046000/- is disallowed u/s 40A(3) of I.T. Act.
2. That order of CIT (A) was served on 9.2.2020 and due to poor medical condition of appellant and looking to severe spread of COVID-19 the appeal could not be submitted within stipulated time of 60 days which expired on 9.4.2020 and this period falls in Lockdown period. Thus after removal of Lockdown period of 91 days (from 23.3.2020 to 30.6.2020) there is delay of 120 days (from 1.7.2020 to 28.10.2020). That appellant being severe sufferance of cronic Lungs Dieses and under advise of Medical Doctor, Government Hospital, Chaksu to remain in the house he could not be out from house for getting preparation and filing of appeal and thus same is delayed. That Affidavit in support of Limitation Application is also enclosed herewith.

Thus it is humbly requested to kindly condone the delay in submission of appeal and the same may please be heard on merits & oblige.

Shri Phool Chand Choudhary, Director of the assessee-appellant has also filed an application dated 21.06.2021 for condonation of delay, contents of which are reproduced below :-

“ That Hon’ble Supreme Court vide Suo Moto Writ Petition (Civil) No. 3 of 2020:

Cognizance for Extension of Limitation has extended the period of limitation in filing petitions/applications/suits/appeals/ all other proceedings within the period of Limitation prescribed under the general law of limitation or under any special laws (both Central or State). The Court observed that inview of the changing scenario relating to the pandemic, the extension of Limitation should come to an end. And it is held by Apex Court that “(i) in computing the period of Limitation, the period from 15.3.2020 till 14.3.2021 shall stand excluded. (ii) in cases where the Limitation would have expired during the period between 15.3.2020 till 14.3.2021, notwithstanding the actual balance period of Limitation remaining, all person shall have a Limitation period of 90 days from 15.3.2021

2. That appellant being severe sufferance of cronic Lungs Dieses and under advise of Medical Doctor, Government Hospital, Chaksu to remain in the house he could not be out from house for getting preparation and filing of appeal and thus same is delayed. That Affidavit in support of Limitation Application has already been submitted with the condonation of delay petition.

Thus it is humbly requested to kindly condone the delay in submission of appeal and the same may please be heard on merits & oblige."

3. We have heard the Id. A/R as well as the Id. D/R on condonation of delay and considered the application filed by the assessee. The assessee has explained the delay of 202 days in filing the appeal. The appeal was due to be filed on 09.04.2020 but the same was filed on 28.10.2020 for the reasons stated by the assessee that due to poor medical condition of the Executive Director of the assessee company who is looking after the tax matters, was suffering from cronic Lungs Disease and also due to COVID-19 pandemic and appeal could not be filed in time. Hence the assessee has submitted that the delay in filing the appeal was due to the sickness of Director of the assessee company and, therefore, the same was beyond the control of the assessee.

4. Having considered the rival submissions as well as going through the contents of the application and affidavit of the assessee, we are satisfied that the assessee has explained a reasonable cause for not filing the appeal within the period of limitation. Accordingly, we condone the delay of 202 days in filing the present appeal.

5. Now we will first adjudicate the additional ground raised by the assessee. The additional ground raised by the assessee is inter-related and inter-connected

and relates to challenging the order of Id. CIT (A) in dismissing the appeal of the assessee by considering the same as barred by limitation, whereas on the contrary it was submitted by the Id. A/R that the appeal filed by the assessee before the Id. CIT (A) was not barred by limitation as the assessee had manually filed the appeal before the Id. CIT (A) on 14.12.2016 within the stipulated period allowed under section 249 of the Income Tax Act, 1961 i.e. within 30 days from the date of service of assessment demand order. However, the Id. A/R submitted that due to having no knowledge about e-filing and manner of e-filing of the same, it could not be submitted the appeal through e-filing within the time and finally the appeal was e-filed on 16.01.2020 vide e-filing acknowledgement no. 292118481160120. The Id. A/R further submitted that the appellant was under bonafide impression that since the manual appeal was filed on 14.12.2016 and the same was valid appeal, thus there was no delay on the part of the assessee in filing e-filing. But the Id. CIT (A) dismissed the appeal of the assessee on the technical ground that the e-filing of the appeal was done on 16.01.2020 with a delay around 1105 days. The Id. A/R also relied upon the judgment of the Coordinate Bench of the Mumbai Tribunal in the case of All India Federation of Tax Practitioners, Mumbai vs. ITO, Mumbai in ITA No.7134/Mum/2017 and also relied upon the decision of Hon'ble Supreme Court in the case of State of Punjab vs. Shyamlal Murari and Others (AIR 1976 SC 1177).

6. On the contrary, the Id. D/R relied upon the orders passed by the revenue authorities and submitted that since the e-filing of appeal by the assessee was done after the expiry of limitation period, therefore, the appeal was rightly dismissed by Id. CIT (A) on the ground of delayed filing.

7. We have heard the Id. Counsels for both the parties and we have also perused the material placed on record as well as orders passed by the revenue authorities. From the records we noticed that it is an undisputed fact that manual appeal was filed by the assessee on 14.12.2016 i.e. within the stipulated period allowed under section 249 of the IT Act, 1961 i.e. within 30 days from the date of service of assessment order. However, the e-filing of the appeal was done much after the said date i.e. 16.01.2020. But the Coordinate Bench of the ITAT Mumbai in the case of All India Federation of Tax Practitioners, Mumbai vs. ITO, Mumbai in ITA No.7134/Mum/2017 decided on 04.05.2018 has categorically held that since the assessee had already filed the appeal in paper form as prescribed under the provisions of IT Act, 1961, however, e-filing of the appeal has not been done by the assessee, therefore, the same was considered as a technical consideration and thus it was held that in this sort of circumstances the technical consideration should not be given preference than that of substantial justice and thus while giving preference to the substantial justice over the technical consideration had held that the appeal filed in manual form was considered as appeal filed within the limitation. Therefore, respectfully following the decision of Coordinate Bench, supra, we are also of the view that though there is a breach on the part of the assessee in e-filing the appeal delayed but the said breach is technical in nature as the appeal in paper form was filed by the assessee within the period of limitation i.e. on 14.12.2016. Therefore, we are of the view that courts should not go strictly by the rulebook to deny justice to the deserving litigant as it would lead to miscarriage of justice and while following the principles laid down by the Hon'ble Supreme Court in the case of State of Punjab vs. Shyamalal Murari and Others (supra), we allow this ground raised by the

assessee by condoning the delay in e-filing of the appeal before the Id. CIT (A) and also by holding that since the appeal was manually filed by the assessee before the CIT (A) was within the limitation, therefore, the appeal filed by the assessee is to be treated as filed within limitation. With these observations, we allow this additional ground raised by the assessee.

8. The other ground raised by the assessee relates to making addition under section 40A(3) of the IT Act, 1961. In this regard the Id. A/R reiterated the same arguments as raised by him before the Id. CIT (A) and also relied upon his written submissions. The same are reproduced herein below :-

“1. That the appellant company is engaged in doing the work of Land Colonization at Jaipur and wherein during above period appellant company has purchased agricultural land at village: Vatika, Sanganer, Jaipur from various agriculturist. That agricultural land detail below were purchased and for which some of payment are made in cash as detailed below:-

S. No .	Name of seller & address	Agricultural Land Khasra number sold	Date of cash payment	Amount of cash paid	Position foKhasra in plotting scheme
1.	Anandi w/o. KanhayaLal and GopalLal, Rajendra Prasad, Mohan Lal, MahendraKuamr S/o. KanhayaLal Village : Vatika, Sanganer, Jaipur (5 persons)	769,781,789, 790, 791, 800, 824, 825, 767, 777, 778, 780, 783, 786, 787, 788, 792, 793, 799, 826, 827	8.4.2013	1625000/- (Rs. 325000/- to each person and total 5 persons are there)	Khasra no.799, 792,787,786, 793, 788, 783, 780 falling in between of plot area and yellow belt.
2.	SarwanLal, Ram Sahai s/o. KanhayaLal (2 persons)	910, 912	29.4.2013	200000/-	As per JDA norms for development of land colonization scheme, specific area of Economic Weaker Section EWS is required to placed separately. And this area of

						land was quiet appropriate to keep as EWS.
3.	Om Prakash s/o Prahlad	769, 789, 791, 824, 784, 770, 782, 785, 796, 797	781, 790, 800, 825, 768, 779, 784, 794,	8.4.2013	221000/-	Khasra falling in between of plot area and Red/Green belt.

Copy of all above sale deeds are annexed as **Annexure-1**.

That Ld AO while passing the assessment order had made addition of Rs.20,46,000/- into total income which were paid to agriculturist for purchase of agricultural land by treating same as violative of section 40A(3) of IT Act.

2. That payment was made to above seller agriculturist in cash out of available cash balance and out of bank withdrawl from bank of which details are given as below:-

Date	Opening cash balance	Cash received/ withdrawl from bank	Cash paid/ incurred	Closing cash balance
1.1.2013	1424811	-	-	1424811
8.2.2013	1424811	Received from Debtors (Rajhans co-operative society) Rs. 10,00,000/-	-	2424811
31.3.2013	2424811	-	230623	2194188
2.4.2013	2194188	Received from Debtors (Rajhans co-operative society) Rs. 5,00,000/-	-	2694188
8.4.2013	2691488	Cash withdrawl from appellant company's bank (OBC Bank) Ch. No.: 779719 of Rs.10,00,000/-	-	3694188
8.4.2013	3694188	-	Cash paid to (a)Anandi Devi &Ors. Rs.16,25,000/- (b) Om PrakshVipr	1462829

			Rs. 221000/- (c) Registration charge paid Rs. 385359/-	
29.4.2013	1462829	-	Cash paid to (a) ShrawanLal and Ram Sahai Rs. 2,00,000/- (b) Registration expense Rs. 433532 (c) Other expense Rs. 60630	768667

3. That appellant company has received on dt.8.2.2013 Rs.10,00,000/- and on dt.2.4.2013 of Rs.5,00,000/- as their old outstanding Debtors recovery (from Rajhans co-operative housing society ltd.). That copy of some of Patta issued by Rajhans co-operative society wherein land of appellant company was surrendered are annexed as **Annexure-2**. That opening cash balance as on 1.4.2013 of Rs. 2194188/- out of which Rs.1625000/- have been utilized for making payment to agriculturist, have also been shown in the audited balance sheet for the financial year 2012-13 (31.3.2013) and copy of which is annexed herewith as **Annexure-3**. That Ld AO has neither doubted about payment nor its sources of above payment made to these agriculturist and thus these have not been held as unguine.

4. That Ld AO merely on the pretext that this payment of Rs.2046000/- is made in cash and without proper analysing the factual circumstances the same are disallowed u/s.40A(3) and added into total income. In this regard it is submitted that this cash payment is fully evident from the Agricultural Land Sale deeds and there is no doubt about whether any non related expenditure is debited in the profit & loss account while computing the Net Profit for the year under consideration.

5. COMPELLING CIRCUMSTANCES BY WHICH PAYMENT MADE TO THESE PARTIES IN CASH:-

That appellant was required to make payment to above parties in cash due to their urgent requirement of cash and for want of getting registration of these agricultural land in name of the appellant company as otherwise entire land colonization scheme would have been flouted and lot of criminal cases might have been instituted against the appellant company.

I. SMT. ANANDI DEVI & OTHERS (Cash paid Rs.16,25,000/-)

That Lt. Smt. Anandi Devi & Others has required to make payment in cash for their hand holding and their personal needs and they have also refused to get registration of sale deed in case of non payment of these small amount in cash. That it is quiet evident that when

remaining purchase payment have been made through account payee cheques only, then why not this amount of Rs.1625000/- would have been made in cash to them and further more the appellant company was having sufficient bank balance with them on dt.8.4.2013 of Rs.5309018/-. That Smt. Anandidevi & others have sold the Khasra nos.: 769,781,789, 790, 791, 800, 824, 825, 767, 777, 778, 780, 783, 786, 787, 788, 792, 793, 799, 826, 827 and out of which Khasra no. 799 is largest chunk of land Khasra and which is falling at start of 200 Ft. Road (at entry of land colonization scheme) and in case it would have not been purchased, then entire scheme would have been flouted and lot of criminal complaints would have been lodged against the appellant company. It is to submit that Rs.16,25,000/- have been paid to four independent persons as below:-

(i)	Smt. Anandi Devi	Rs.325000/-
(ii)	GopalLal Sharma	Rs. 325000/-
(iii)	Rajendra Kumar Sharma	Rs. 325000/-
(iv)	Mohan Lal Sharma	Rs. 325000/-
(v)	Mahendra Kumar Sharma	Rs. 325000/-

(each party was having their share of 20% in above agricultural land)

Thus by going through with above cash payment it is quiet apparent that all these payment are small petty amount and for meeting their personal house needs. That appellant has also submitted confirmation letters before commissioner (appeal) by way of application u/rule 46A of IT Rules as issued by all these above referred sellers and same are annexed as **Annexure-4**. It is worth to submit that while passing the appeal order by Ld Commissioner (A) these documentary evidences were on record and have neither disregarded nor doubted these evidences while passing the appeal order.

II. SARWAN LAL, RAM SAHAI (Cash paid Rs.2,00,000/-)

That Mr.Sarwanlal, Ram Sahai has required to make payment in cash from appellant company. That both these sellers have mortgaged their land khasras with Canara Bank (a/c no.: 235336309 Ram Sahai Jangid) and wherein prior to sell of this agricultural land he was required to get release the mortgage from bank and wherein he has deposited Rs. 97516/- on dt.27.4.2013 and thereafter Patwari has removed hypothecation from Land revenue record. As in same line Mr. Sarwan Lal Jangid (a/c no.: 235336471) have also mortgaged his land with canara bank and accordingly he has also deposited Rs. 97459/- in cash on dt.27.4.2013 and thereafter Patwari has removed hypothecation from Land revenue record. That agricultural land have been got registered from both these sellers on dt.29.4.2013 after removal of hypothecation. Copy of both bank accounts and copy of Jamabandi whereby hypothecation are released by Patwari are annexed herewith as **Annexure-5**. That due to not have confidence in between the parties the payment were deposited in Canara Bank in Cash by seller out of cash given by appellant company (buyer) and only then sale deed have been got registered.

Thus without making payment to both of them in cash this was not possible for both of them to get acquire the clear marketable title of the property which was purchased by the appellant company.

Thus looking to facts & circumstances of the case action of both the lower authorities are unjustified and thus order may please be quashed.

III. **OM PRAKASH S/O. PRAHLAD (Cash paid Rs.2,21,000/-)**

That Mr. Om Prakash has required to make payment in cash from appellant company for his hand holding purpose and which is forming part of the sale deed. That he has sold his share in the Land Khasra no.: 794, 796, 797 that these land khasra are at 200 Ft. Bye Pass Road and at situated at main entry of residential colony. That merely Rs.2,21,000/- have been paid in cash for meeting petty cash need of seller of land. That appellant has also submitted confirmation letters before commissioner (appeal) by way of application u/rule 46A of IT Rules as issued by all these above stated buyers and same is annexed herewith as **Annexure-6**. It is worth to submit that while passing the appeal order by Ld Commissioner (A) these documentary evidences were on record and have not been disregarded while passing the appeal order.

6. **COMMON ARGUMENTS IN ALL THREE CASH PAYMENTS :-**

(i) That payment of Rs.20,46,000/- have been made by appellant company and which is explicitly written/ mentioned in the registered sale deed of agricultural land. Thus sanctity of payment is not doubted and no such contention have been raised by both the lower authorities.

(ii) That payment of Rs.20,46,000/- is made out of available cash balance and of which entire source with documentary evidences are explained. That cash balance as on 1.4.2013 of Rs.2194188/- is also shown in the audited balance sheet as on 31.3.2013.

(iii) That a sum of Rs.10,00,000/- is withdrawn from the bank account on dt.8.4.2013 prior to getting registration of sale deed.

(iv) That on dt.6.4.2013 (just prior to getting registration of sale deeds) there was sufficient bank balance of Rs.53,09,018/- in Oriental Bank of Commerce of appellant company. Thus it is quiet clear that payment might have been made through banking channel but due to personal house hold requirement and due to compelling circumstances the appellant company was bound to make payment of small amount to them in cash.

(v) That total cash payment for purchase of agricultural land is of Rs.2046000/- only and which is just 3% of total purchase of Rs.70524774/-. Thus if there would have been any intention to show higher purchase then this would have been on quiet higher side then just 3% of total purchase payment.

(vi) That the exception to provision of Section 40A(3) is provided u/rule 6DD of IT Rules and wherein CBDT vide its circular no.: 220 (F. No. 206/17/76-IT (A-II) dt. 31.5.1977 has issued and wherein para no. 4 which states as below:-

“Para no.4 - All the circumstances in which the conditions laid down in rule 6DD(j) would be applicable can not be spelt out. However, some of them which would seem to meet the requirements of the said rule are:

- (a) The purchase is new to the seller; or
- (d) the seller is refusing to accept the payment by way of crossed cheque/ draft and the purchaser’s business interest would suffer due to non availability of goods otherwise than from this particular seller; or”

“Para no.6 - It is further clarified that the above circumstances are not exhaustive but illustrative. There could be cases other than those falling within the above categories which would also meet the requirement of rule 6DD(j).”

7. That Rajasthan High Court in the case of **Smt. HarshilaChorida Vs. ITO (2008 – ITR – 349)** has held that “ the Income tax officer shall record his satisfaction about the fulfilment of the conditions for allowing the benefit of rule 6DD(j). Apparently, section 40A(3) was intended to penalize the tax evader and not the honest transactions.” It is further held by relying on the judgment of Hon’ble Supreme Court in CTO Vs. Swastik Roadways (reported in 2004-2-RC-539) that when there is no dispute about the genuineness of the transactions and the payment and identity of the receiver are established then no addition u/s.40A(3) will be made.

(copy of judgment annexed)

8. That in the case of **VijayetaBuildconPvt. Ltd. Vs. ACIT (2021-Taxmann.com-133 Jaipur Tribunal)** It has been held that “the source of cash payments were clearly identifiable inform of the withdrawals from the assessee’s bank account. Further the said details were submitted before the lower authorities and same were not disputed by them. It was not the case of Revenue either that unaccounted or undisclosed income of assesseehad bee utilised in making the cash payments. The genuineness of transaction was evidenced by registered sale deeds wherein the payment through cheque as well as cash had been duly mentioned.

(copy of judgment annexed)

Thus the Id. A/R submitted that the addition may kindly be deleted.”

9. On the contrary, the Id. D/R supported the orders of the Revenue authorities.

10. We have heard the Id. Counsels for both the parties and we have also perused the material placed on record as well as orders passed by the revenue authorities. We noticed that the assessee company is engaged in doing the work of land colonization at Jaipur and during the year under consideration the assessee had purchased agricultural land at different areas of Jaipur from different agriculturists

and in this regard the details have already been mentioned in Annexure-1 filed with the written submissions. However, the AO while passing the assessment order made the addition to the total income by holding that the payments made by the assessee were in violation of section 40A(3) of the IT Act. The Id. A/R categorically submitted that the payments were made to the sellers of the land in cash out of the cash balance available and out of bank withdrawals from the bank regarding which he has submitted details and the same are reproduced below :-

“ 2. That payment was made to above seller agriculturist in cash out of available cash balance and out of bank withdrawal from bank of which details are given as below:-

Date	Opening cash balance	Cash received/ withdrawal from bank	Cash paid/ incurred	Closing cash balance
1.1.2013	1424811	-	-	1424811
8.2.2013	1424811	Received from Debtors (Rajhans co-operative society) Rs. 10,00,000/-	-	2424811
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8.4.2013	3694188	-	Cash paid to (a)Anandi Devi &Ors. Rs.16,25,000/- (b) Om PrakshVipr Rs. 221000/- (c) Registration charge	1462829

			paid Rs. 385359/-	
29.4.2013	1462829	-	Cash paid to (a) ShrawanLal and Ram Sahai Rs. 2,00,000/- (b) Registration expense Rs. 433532 (c) Other expense Rs. 60630	768667

It was further submitted that the assessee company had received Rs. 10,00,000/- on 08.02.2013 and Rs. 5,00,000/- on 02.04.2013 as the old outstanding debtors recovered from Rajhans Cooperative Housing Society Ltd. Copies of some of the Pattas issued by Rajhans Cooperative Housing Society Ltd. wherein land of the assessee company was surrendered are also annexed as Annexure-2. In this way the opening cash balance as on 01.04.2013 was Rs. 21,94,188/- out of which Rs. 16,25,000/- have been utilized for making payment to agriculturists. The said fact has also been recorded in the audited balance sheet for the financial year 2012-13 and copy of which has already been annexed with the paper book as Annexure-3. During the assessment proceedings, the AO has not doubted about the payment or its source. However, the AO had made addition only on the pretext that the payment to the agriculturists/sellers were made in cash and thus made disallowance under section 40A(3) of the Act. Although before us, the Id. A/R submitted that there were compelling circumstances for which payments were made to the agriculturists in cash, otherwise they have refused to execute the sale deeds. In this regard the details for making the payment in cash to the respective sellers have been given in written submissions at para 5 which is reproduced herein below :-

“5. COMPELLING CIRCUMSTANCES BY WHICH PAYMENT MADE TO THESE PARTIES IN CASH:-

That appellant was required to make payment to above parties in cash due to their urgent requirement of cash and for want of getting registration of these agricultural land in name of the appellant company as otherwise entire land colonization scheme would have been flouted and lot of criminal cases might have been instituted against the appellant company.

I. SMT. ANANDI DEVI & OTHERS (Cash paid Rs.16,25,000/-)

That Lt. Smt. Anandi Devi & Others has required to make payment in cash for their hand holding and their personal needs and they have also refused to get registration of sale deed in case of non payment of these small amount in cash. That it is quiet evident that when remaining purchase payment have been made through account payee cheques only, then why not this amount of Rs.1625000/- would have been made in cash to them and further more the appellant company was having sufficient bank balance with them on dt.8.4.2013 of Rs.5309018/-. That Smt. Anandidevi& others have sold the Khasra nos.: 769,781,789, 790, 791, 800, 824, 825, 767, 777, 778, 780, 783, 786, 787, 788, 792, 793, 799, 826, 827 and out of which Khasra no. 799 is largest chunk of land Khasra and which is falling at start of 200 Ft. Road (at entry of land colonization scheme) and in case it would have not been purchased, then entire scheme would have been flouted and lot of criminal complaints would have been lodged against the appellant company. It is to submit that Rs.16,25,000/- have been paid to four independent persons as below:-

- | | | |
|-------|-----------------------|--------------|
| (i) | Smt. Anandi Devi | Rs.325000/- |
| (ii) | GopalLal Sharma | Rs. 325000/- |
| (iii) | Rajendra Kumar Sharma | Rs. 325000/- |
| (iv) | Mohan Lal Sharma | Rs. 325000/- |
| (v) | Mahendra Kumar Sharma | Rs. 325000/- |
- (each party was having their share of 20% in above agricultural land)

Thus by going through with above cash payment it is quiet apparent that all these payment are small petty amount and for meeting their personal house needs. That appellant has also submitted confirmation letters before commissioner (appeal) by way of application u/rule 46A of IT Rules as issued by all these above referred sellers and same are annexed as **Annexure-4**. It is worth to submit that while passing the appeal order by Ld Commissioner (A) these documentary evidences were on record and have neither disregarded nor doubted these evidences while passing the appeal order.

II. SARWAN LAL, RAM SAHAI (Cash paid Rs.2,00,000/-)

That Mr.Sarwanlal, Ram Sahai has required to make payment in cash from appellant company. That both these sellers have mortgaged their land khasras with Canara Bank (a/c no.: 235336309 Ram SahaiJangid) and wherein prior to sell of this agricultural land he was required to get release the mortgage from bank and wherein he has deposited Rs. 97516/- on dt.27.4.2013 and thereafter Patwari has removed hypothecation from Land revenue record. As in same line Mr.SarwanLalJangid (a/c no.: 235336471) have also mortgaged his land with canara bank and accordingly he has also deposited Rs. 97459/- in cash on dt.27.4.2013 and thereafter Patwari has removed hypothecation from Land revenue record. That agricultural land have been got registered from both these sellers on dt.29.4.2013 after removal of hypothecation. Copy of both bank accounts and copy of Jamabandi whereby hypothecation are released by Patwari are annexed herewith as **Annexure-5**. That due to not have confidence in between the parties the payment were deposited in Canara Bank in Cash by seller out of cash given by appellant company (buyer) and only then sale deed have been got registered.

Thus without making payment to both of them in cash this was not possible for both of them to get acquire the clear marketable title of the property which was purchased by the appellant company.

Thus looking to facts & circumstances of the case action of both the lower authorities are unjustified and thus order may please be quashed.

III. OM PRAKASH S/O. PRAHLAD (Cash paid Rs.2,21,000/-)

That Mr. Om Prakash has required to make payment in cash from appellant company for his hand holding purpose and which is forming part of the sale deed. That he has sold his share in the Land Khasra no.: 794, 796, 797) that these land khasra are at 200 Ft. Bye Pass Road and at situated at main entry of residential colony. That merely Rs.2,21,000/- have been paid in cash for meeting petty cash need of seller of land. That appellant has also submitted confirmation letters before commissioner (appeal) by way of application u/rule 46A of IT Rules as issued by all these above stated buyers and same is annexed herewith as **Annexure-6**. It is worth to submit that while passing the appeal order by Ld Commissioner (A) these documentary evidences were on record and have not been disregarded while passing the appeal order.”

Apart from this, it was brought to our notice that assessee had also filed application for placing additional evidence under Rule 46A before the Id. CIT (A) on 16.01.2020 which consists of confirmation letters from the buyers about their need for cash payment while executing sale deeds. The said application was not even dealt with by the Id. CIT (A) while deciding the appeal against the assessee. We have gone through the application filed by the assessee for placing additional evidence under Rule 46A before the Id. CIT (A) and also considered the CBDT Circular which is annexed at page 101 wherein it has been categorically mentioned as under :-

" 3. Under clause (j) of rule 6DD the provision in section 40A(3) will not be applied by the Income-tax Officer where he is satisfied that the payment could not be made by crossed bank cheque or draft due to 'exceptional or unavoidable circumstances' and the assessee furnishes evidence as to the genuineness of the payment and the identity of the payee. The hold-up in cheque clearing operations in the banks or any other similar circumstances which is likely to cause reasonable apprehension in the mind of the payee that the crossed cheque/bank draft will not be cleared expeditiously would constitute 'exceptional or unavoidable circumstances' within the meaning of clause (j) of rule 6DD. Accordingly, any payment for business expenditure made during the period when the cheque clearing operations are suspended or other similar circumstance as aforesaid exists, will not be covered by the provisions of section 40A(3) provided the assessee furnishes evidence to the satisfaction of the Income-tax Officer as to the genuineness of the payment and the identity of the payee."

Thus considering the application for placing additional evidence on record and keeping in view the CBDT Circular and the judgments relied upon by the assessee, we admit on record the statements of the sellers as additional evidence. We have also gone through the following decisions :-

Smt. Harshila Chordia vs. ITO
(2008) 298 ITR 349 (Raj. HC)

M/s. Vijayeta Buildcon Pvt. Ltd. vs. ACIT
(2021) 186 ITD 493 (ITAT Jaipur)

Thus we are of the view that assessee was well within its right to make the payment in cash to the sellers. Apart from this, we have also noticed that the entire payment of Rs. 20,46,000/- was made by the assessee out of available cash balance and the documentary evidence thereof have already been explained and in this regard audited balance sheet as on 31.03.2013 also reflects the cash balance of Rs. 21,94,188/-. We have further noticed that assessee had made total purchases of Rs. 70524774/- out of which cash payment purchases is only of Rs. 20,46,000/- which is approximately 3% of the total purchases and while keeping in view the exceptions to the provisions of section 40A(3) as is provided under Rule 6DD of IT Rules and wherein CBDT vide its Circular No. 220 (F.No. 206/17/76-IT (A-II) dt. 31.5.1977 has issued and wherein para no. 4 which states as below :-

“Para no.4 - All the circumstances in which the conditions laid down in rule 6DD(j) would be applicable can not be spelt out. However, some of them which would seem to meet the requirements of the said rule are:

- (a) The purchase is new to the seller; or
- (d) the seller is refusing to accept the payment by way of crossed cheque/ draft and the purchaser's business interest would suffer due to non availability of goods otherwise than from this particular seller; or”

“Para no.6 - It is further clarified that the above circumstances are not exhaustive but illustrative. There could be cases other than those falling within the above categories which would also meet the requirement of rule 6DD(j).”

Thus we are of the view that section 40A(3) was intended to penalize the tax evaders and not the honest transactions. Since the assessee has already placed on record the statements of the sellers and the other required documents, therefore, in

the fitness of things, we restore the matter to the file of the AO with the direction to verify the statements and other documents placed before Id. CIT (A) by way of additional evidence which we have now taken on record and in case after verification those documents are found to be genuine and reasons mentioned by the sellers are found to be correct, then in that eventuality no addition under section 40A(3) is to be made. With these directions, we restore the matter back to the file of the AO.

11. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 11/01/2023.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 11/01/2023.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-M/s. Om Shiv Properties Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward 6(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 306/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

