

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri K.Narasimha Chary, Judicial Member

ITA Nos.678 & 679/Hyd/2018		
Assessment Years: 2008-09 & 2009-10		
JCIT (OSD), Range-1 8 th Floor, C-Block Room No.836, I.T.Towers Hyderabad-500 004	Vs.	M/s. Anuradha Properties & Townships Private Limited G-1, Reliance Krishna Apartments, Hillfort Road Adarshnagar, Hyderabad PAN : AAFCA0724R
(Appellant)		(Respondent)
Assessee by:	Shri K.A.Sai Prasad, CA	
Revenue by:	Shri T.Sunil Gowtham, Sr.AR	
Date of hearing:	11.05.2023	
Date of pronouncement:	16.05.2023	

ORDER

Per Shri Rama Kanta Panda, A.M.

The above two appeals filed by the revenue are directed against the common order dated 03.01.2018 of the Learned Commissioner of Income Tax (Appeals)-8, Hyderabad relating to AY 2008-09 & 2009-10 respectively. Since, identical grounds have been raised by the revenue in both these appeals, therefore, for the sake of convenience, these two appeals were heard together and are being disposed-of by this common order.

ITA No.678/Hyd/2018 (AY 2008-09)

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of development and selling of lands. It filed its return of income belatedly on 18.01.2011 declaring total

income of Rs.64,31,217/-. The AO reopened the assessment u/s. 147 of the I.T.Act by recording the following reasons.

“ The assessee company filed a return of income admitting the Total income at Rs.64,31,217/- on 18.01.2011 belatedly. Even though the assessee was having taxable income, it had not filed its return of income either u/s. 139(1) or 139(4), the income chargeable to tax has escaped assessment.

Further, as per intimation received from the DDIT (Inv.), Unit-II(1), Bangalore vide letter No. DDIT (Inv.)/U-II(1)/AAFCA0724R/11-12, Dt.12.05.2011 and as per assessee’s own admission (MD’s sworn statement) the company made huge cash payments in excess of Rs.20,000/- in connection with development of housing plots at Bangalore which attracts provisions of section 40A(3). The cash payment according to the sworn statement are Rs.1.50 crores.

For the above reasons, the Assessing Officer forming opinion that the income chargeable to tax had escaped assessment and had issued notice u/s. 148.”

3. Accordingly notice u/s. 148 of the I.T.Act was issued to the assessee on 19.05.2011 which was served on 23.05.2011. However, there was no response from the side of the assessee to the said notice issued u/s. 148 of the Act. The notices issued u/s. 143(2) & 142(1) also remained un-complied with. Even the show cause notice issued was also un-complied with. The AO therefore, proceeded to complete the assessment u/s. 144 of the I.T.Act. However, at the fag end of the time barring assessment, the AR of the assessee appeared before the AO and submitted that all the transactions are genuine and reflected in the financial statements submitted. However, in absence of production of books of accounts, the AO completed the assessment u/s. 144 of the I.T.Act determining the income of the assessee at Rs.2,14,31,217/- wherein he made addition of Rs. 1,50,00,00/- by invoking the provisions of section 40A(3).

4. Before the Id.CIT(A), the assessee made elaborate submissions and filed certain additional evidences which were forwarded to the

AO for a remand report. After obtaining the remand report of the AO and the rejoinder of the assessee to such remand report, the Id.CIT(A) deleted the addition by observing as under:-

7. I have carefully considered the issue, the facts on record, the remand report of the AO, the rejoinder and the written submissions of the AR. Brief facts, for proper appreciation of the issue under consideration, can be stated as under:-

7.1 The appellant company entered into a MoU on 22.10.2005 with Sri B.V. Sampath and family members (Landlords) for the purchase of agricultural land measuring Ac 12.26 Gts for a sale consideration of Rs.44 lakhs per Acre. On the date of execution of MoU, the appellant paid advance of Rs.25 lakhs to Sri B.V. Sampath and family. Approval from the BMRDA was sought for forming 342 plots of various dimensions totaling about 5.40 lakhs sft. Thereafter, it transpired that the Said MOU executed on 22.10.2005 was changed and the appellant company and the landlords have orally agreed to come together to give the land to the appellant or Joint Development Agreement (JDA) basis. The salient points of revised terms of agreement orally settled between the appellant and the landlords are that the appellant agreed for a minimum payment of Rs.60 lakhs per Acre to the land owners, The appellant also agreed to share 50% of the profit from the sale proceeds of the plots after reducing the expenditure directly incurred on the plots which were to be sold by the appellant.

7,2 The appellant accordingly made payments to landlords being i.e. Sri B.V.Sampath and family members as under, over a period of time:-

S.No.	Financial Year	Amount(Rs.)
1	2005-06	20,00,000.00
2	2006-07	1,03,47,000.00
3	2007-08	4,42,60,500.00
4	2008-09	1,30,45,000.00
	Total	6,96,52,500.00

Out of said payment of Rs.6,96,52,500/-, an amount of Rs.6,75,83,000/- has been reportedly debited in the P&L account of the appellant as amount paid towards purchase of land and the balance amount of Rs.20,69,500/- has been shown as advance. The entire payments were reportedly made through cheques and they were reflected in the books of account of the appellant and debited towards purchase of land.

7.3 Out of the total 342 sites, the appellant sold 160 sites measuring about 2.50 lakh sft. Thereafter, it appears that differences have crept in between the appellant and the landlords and the balance plots were taken over by the landlords.

8. Coming to the adjudication of the issue, it is seen that the AO relied upon the sworn statement of Sri M. Ramachandra Reddy, MD of the company given before the DDIT(Inv)/ Bangalore, as the sole basis for making the impugned disallowance u/s 40A(3). I have perused the statement of Sri M. Ramachandra Reddy given before the DDIT(Inv)/ Bangalore. The AO relied upon the answer to question NO.7 to make the impugned addition. The replies given by Sri M. Ramachandra Reddy to QNos.6 & 7, for appropriate appreciation of facts, are reproduced here under:-

Q. 6. Please furnish details of the projects undertaken by your company in Bangalore? both completed as well as ongoing projects?

Ans. The Company Anuradha Properties Et: Townships Private Limited, entered into a joint development agreement in the year 2005 with Shri B. V. Sampath and his family members to develop 24 acres 16 guntas of agricultural land by converting it into non nonagricultural land. The land is situated at Bukkasagara Village, JiganiHobli, Anekal Taluk, Bangalore. BMRDA approval was sought for forming 342 sites of various dimentions measuring in all about 5,40,000 sq. ft. As per the JDA initially we have agreed to purchase land at the rate of Rs. 40 lacs per acre on development basis from Shri B. V. Sampath. Subsequently the terms were changed to jointly develop the land and share the sale proceeds after allowing for expenditure incurred in connection with sale of the land. The proceeds were agreed to be shared in the ratios of 70:30. The sale of sites took place during the year 2007-2008. As on date about 2,00,000 sq. ft of land has been sold and the profits arising have been shared in the agreed ratio. on account of this deal a sum of Rs. 5.50 crore has been paid to Shri B. V. Sampath and his family members in various spells over a period of 3 years. Most of the payments were by cheque except in a few stray cases. As of now the project is lying standstill it is learnt that Shri B. V. Sampath and his family members have retains a portion out of the balance 3,00,000 sq. ft. which is still to be sold as per the JDA [copy of the MOU along with relevant records in connection with the project is annexed to this statement]

Q.7. Please give the details of the expenditure that have been incurred on the development of the project. Please also give details of the customers who have purchased sites from you and how much cash was received from the customers.

Ans: The entire expenditure relating to the development of the layout has been met by Anuradha Properties and Townships

Private Limited. No amount was spent by Shri B.V.Sampath. As regards the details of the customers, we do have the copies of the sale deeds which were executed at Bangalore. However, they were sent to Hyderabad for finalisation of audit. As regards cash received from customers the same is entered in the sale deed. Mr. B. V. Sampath would have received about Rs. 1.50 Crores. Also there are transactions which were directly handled by Shri B. V. Sampath for which too he has received the considerations in cash. The quantum of such direct transactions by Shri B. V. Sampath would be Rs. 2 crores to Rs. 4 crores. As regards the quantum of cash received by Shri B. V. Sampath it should be around one crore fifty lakhs. He has also sold sites out of the layout formed directly without our knowledge. "

8.1 From the above, it is evident that the MD of the appellant company merely mentioned that Sri B,V. Sampath sold sites of the layout formed directly without the appellant's knowledge and in this context of direct sale of sites by Sri B.V. Sampath, the quantum of direct transactions by Sri B.V. Sampath would be Rs.2 to 4 crores. It can be seen that what all stated by the MD of the appellant company was that Sri B.V.Sampath would have received Rs.1.5 crores by way of cash receipts. It is evident from the said statement that nowhere it has been stated that the appellant paid RS.1.50 crores in cash to Sri B.V.Sampath and family members. The AO has not brought any material on record to substantiate the impugned disallowance but for relying upon a statement, which also doesn't lead to any such inference, as drawn by the AO.

8.2 It is evident from the aforesaid statement before the DDIT(Inv) that there is no admission whatsoever by the MD of the appellant that it paid RS.1.50 crores in cash to Sri B.V. Sampath and family members. The AO did not cause any enquiries into the matter and didn't examine/ cross-examine the statement made by Sri M. Ramachandra Reddy before the DDIT(Inv.) with Sri B.V.Sampath and others. Further, the AO did not bring anything on record any documentary evidence of material seized or impounded in support of the conclusion so drawn by him.

8.3 I am in agreement with the argument of the AR that disallowance u/s 40A(3) could have been made only if the payments in cash were reflected in the books of account and they were debited to the P&L account. As per the submissions made by the appellant, evidenced by the Books of A/c produced during the remand proceedings, all the payments made to the landlords were made by cheques. The AO himself recorded in the assessment order that the books of account were not submitted by the appellant and he therefore completed the assessment u/s.144A of the Act on best judgment basis. Having completed the assessment u/s 144 of the Act without having the occasion to examine the Books of A/c, it is not known as to how the AO could have made the disallowance u/s 40A(3) of the Act. Furthermore, it is evident from the above paras that the AO made the same disallowance of

Rs.1.50 crores u/s 40A(3) in both the assessment years i.e. AYs 2008-09 and 2009-10, which is beyond comprehension.

8.4 In view of the above, it is held that the said disallowance made by the AO is not sustainable either on facts or on law. A general and vague statement made by the MD of the appellant company was relied upon by the AO without proper appreciation of facts/conducting appropriate enquiries and bringing cogent evidences on record. No evidence, either oral or documentary, has been brought on record by the AO that in fact the said cash payments were made by the appellant company to Sri B.V. Sampath and family members, which are reflected in the Books of Ale of the appellant. In view of the above, the impugned disallowance of Rs.1.50 crores u/s 40A(3) is deleted and the Grounds No.2 & 3 of appeal are allowed.

5. Aggrieved with such order of the Ld.CIT(A), the revenue is in appeal before the Tribunal by raising the following grounds of appeal.

1. The order of the learned CIT(A) is erroneous on facts as well as in law.

2. The Ld.CIT(A) erred in deleting the disallowance of Rs.1,50,00,000/- made by invoking provisions of sec. 40A(3) of the I.T.Act.

3. The Ld.CIT(A) failed to take into cognizance the findings arrived in the remand report furnished by the AO.

4. The appellant craves to add, delete, substitute and amend any ground of appeal before and/or at the time of hearing of the appeal.

6. The ld. DR strongly relied on the order of the AO.

7. The ld.counsel for the assessee on the other hand heavily relied on the order of the ld.CIT(A) and submitted that since the ld.CIT(A) has deleted the addition based on the remand report of the AO, therefore, the grounds raised by the revenue should be dismissed.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and Ld.CIT(A) and the paper book

filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case, made addition of Rs. 1,50,00,000/- by invoking the provisions of section 40A(3), on the ground that the assessee company made huge cash payments in excess of Rs.20,000/- in connection with development of housing plots at Bangalore which attracts provisions of section 40A(3). We find the Id.CIT(A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraph.

8.1 We do not find any infirmity in the order of the Id.CIT(A) on this issue. It is an admitted fact that the assessee, during the course of assessment proceedings, had not produced the books of accounts for which the assessment was completed u/s. 144 of the I.T.Act. The AO made the addition of Rs. 1.50 crores based on the statement of the M.D of the company before the DDIT (Inv.). The relevant question No.7 and answer there to which is reproduced by the Id.CIT(A) is being reproduced here again at the cost of repetition.

Q.7. Please give the details of the expenditure that have been incurred on the development of the project. Please also give details of the customers who have purchased sites from you and how much cash was received from the customers.

Ans: The entire expenditure relating to the development of the layout has been met by Anuradha Properties and Townships Private Limited. No amount was spent by Shri B.V.Sampath. As regards the details of the customers, we do have the copies of the sale deeds which were executed at Bangalore. However, they were sent to Hyderabad for finalisation of audit. As regards cash received from customers the same is entered in the sale deed. Mr. B. V. Sampath would have received about Rs. 1.50 Crores. Also there are transactions which were directly handled by Shri B. V. Sampath for which too he has received the considerations in cash. The quantum of such direct transactions by Shri B. V. Sampath would be Rs. 2 crores to Rs. 4 crores. As regards the quantum of cash received by Shri B. V. Sampath it should be around one crore fifty lakhs. He has also sold sited out of the layout formed directly without our knowledge. "

8.2 From the above it is seen that the assessee nowhere stated that he has paid an amount of Rs. 1.50 crore to Shri B.V.Sampath.

8.3 We find during the remand proceedings the books of accounts were produced before the AO according to which all the payments made to the landlords were paid by cheque.

9. We find the AO at para 7 of the remand report has given the following observation:-

7. On verification of copies of books of accounts furnished during the course of remand proceedings, in spiral binding for the FY 2007-08 the cash expenses incurred in cash as detailed in Annexure within the meaning of section 40A(3) i.e payments made in cash over and above Rs. 20,000/- was quantified at Rs.17,15,165/- for site expenses and other expenses. Hence, the addition made u/s. 40A(3) to the extent of 17,15,165/- may be sustained. It is also pertinent to mention that the payments made to individuals is quantified at Rs.1,23,94,796/-. In the absence of any explanation the expenses incurred Rs. 20,000/- and above quantified at Rs. 17,15,165/- is disallowable u/s. 40A(3) of the I.T.Act. Apart from this, the assessee company made payments to individuals the same may attracts provisions u/s. 269 TT of the I.T.Act. The MD of the company had admitted an amount of Rs.1,50,00,000/- towards payments for purchase of land from Sri B.V. Sampath. Since, the payments made to different individuals apparently clients with genuinity of the same reaching the destination of client, it can also be presumed that the part of payments of Rs.1,23,94,796/- might have reached Sri B.V.Sampath. In the above circumstances the ld.CIT(A) is requested to decide the issue on merits of the case.

10. A perusal of the above observation shows that the AO is trying to invoke the provisions of section 40A(3) for some site expenses and other expenses, but not on account of any payments made to Shri B.V.Sampath and family members by the assessee. Even in the remand report also, the AO had given vague answer according to which he is presuming that part of the payments of Rs.1,23,94,796/- might have reached Shri

B.V.Sampath. This in our opinion cannot be the basis for addition u/s. 40A(3).

11. For attracting the provisions u/s. 40A(3), there must be some cash payments recorded in the books of accounts. However, in the instant case as mentioned earlier no books of accounts were produced during the course of assessment proceedings for which the assessment was completed u/s. 144 of the I.T.Act and therefore, the AO could not have invoked the provisions of section 40A(3). So far as the statement of the Director is concerned, we find nowhere he has stated that they have paid an amount of Rs. 1.50 crore towards purchase of land.

12. We also agree with the observation of the Id.CIT(A) that in absence of examination of the books of accounts and without finding that such cash payments were made and debited to the profit and loss account, the AO could not have made the disallowance u/s. 40A(3) of the I.T.Act. Th Id.DR also could not controvert the finding of the Id.CIT(A) that the AO had made the same disallowance of Rs. 1.50 crores u/s. 40A(3) in the subsequent assessment year i.e. AY 2009-10 also. Since, no evidence either oral or documentary has been brought on the record by the AO that in fact the said cash payments were made by the assessee company to Shri B.V. Sampath and family members, therefore, in absence of any contrary material brought to our notice by the Id.DR and in view of the detailed reasoning given by the Id.CIT(A), we do not find any infirmity in the order of the Id.CIT(A) deleting the addition of Rs. 1.50 crores made by the AO u/s. 40A(3) of the Act. Accordingly, the order of the Id.CIT(A) is upheld and the grounds raised by the revenue are dismissed.

ITA No.679/Hyd/2018 (AY 2009-10)

13. Grounds raised by the revenue are as under:-

- 1. The order of the learned CIT(A) is erroneous on facts as well as in law.*
- 2. The Ld.CIT(A) erred in deleting the disallowance of Rs.1,50,00,000/- made by invoking provisions of sec. 40A(3) of the I.T.Act.*
- 3. The Ld.CIT(A) failed to take into cognizance the findings arrived in the remand report furnished by the AO.*
- 4. The appellant craves to add, delete, substitute and amend any ground of appeal before and/or at the time of hearing of the appeal.*

14. After hearing both the sides, we find the above grounds raised by the revenue are identical to the grounds of appeal raised in ITA No. 678/Hyd/2018 for AY 2008-09. We have already decided the issue and the grounds raised by the revenue have been dismissed. Following similar reasonings, the grounds raised by the revenue are dismissed.

15. In the result, both the appeals filed by the revenue are dismissed.

Order pronounced in the Open Court on 16th May, 2023.

Sd/- (K.NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 16th May, 2023

Thirumalesh/sps

Copy to:

S.No	Addresses
1	JCIT (OSD), Range-1 8 th Floor, C-Block Room No.836, I.T.Towers Hyderabad-500 004
2	M/s. Anuradha Properties & Townships Private Limited G-1, Reliance Krishna Apartments, Hillfort Road Adarshnagar, Hyderabad
3	CIT(A)-8, Hyderabad
4	Pr.CIT-1, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order