

**आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“C” BENCH, CHENNAI**

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI V. DURGA RAO, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील सं./ ITA No.321/Chny/2022**  
**(निर्धारण वर्ष / Assessment Year: 2012-13)**

DCIT Central Circle-3(1) Chennai.	बनम/ Vs.	M/s. Om Shakthy Agencies (Madras) Pvt.Ltd. T-64, SIDCO Industrial Estate, Guindy, Chennai-600 032.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAACO-3722-E</b>		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri K.R. Vasudevan (Advocate)-Ld.AR

सुनवाई की तारीख/ Date of Hearing	:	10-08-2023
घोषणा की तारीख /Date of Pronouncement	:	23-08-2023

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-19, Chennai dated 24-02-2022 in the matter of an assessment framed by the Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 31-03-2015. The grounds raised by the Revenue read as under: -

The order of the learned commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

The learned CIT(A) has erred in deleting the disallowance made u/s.40A(3) amounting to Rs.2,62,40,000/- in respect of cash payment made to land owners for purchase of lands.

2.1. The CIT(A) erred in holding that cash payment made to the land owners falls within the exception provided under Rule 6DD(k) and Rule 6DD(g) of the Income tax Rules.

2.2 The learned CIT(A) erred in allowing relief invoking exception under Rule 6DD(k) of IT Rules without giving a finding based on evidence as to existence of relationship of principal and agent between the payer and the payee.

3.The CIT(A) failed to note that the appellant business model is on the lines of real estate developer and not as an agent to the Principal (i.e) Project developer, hence its case did not fall under the exception under Rule 6DD(k) of Income tax Rules.

2.4 The CIT(A) ought to have appreciated that the assessee has not proved that the payments were made to the vendors in a village which on the date of such payment is not served by any bank. The ITAT in the assessee's own case for earlier year only directed the A.O to decide the issue afresh. The CIT(A) erred in relying on the remand report submitted during the earlier assessment proceedings and submission made during the appellate proceedings

2.5 The learned CIT(A) erred in allowing relief invoking exception in Rule 6DD(g) of the IT Rules without any evidence and factual finding.

3.1 The CIT(A) erred in deleting the addition made towards inflation of purchases amounting to Rs.1,01,84,000/- and addition on account of unaccounted purchases to the tune of Rs.1,29,96,000/-.

3.2 The CIT(A) relied on the affidavits, reconciliation statements and stamped receipts for payments filed during the appellate proceedings. The CIT(A) ought to have given opportunity to the AO as per Rule 46A of the Income tax Rules while relying on these new evidences.

3.3 The CIT(A) failed to appreciate that the enquiries were conducted in respect of few stamped documents during the post search proceedings and found that the sellers disowned their signatures and the amount claimed to have been paid by the company to them.

4.1 The learned CIT(A) erred in deleting the disallowance made u/s.40(a)(ia) to the tune of Rs.32,25,000/-.

4.2 The CIT(A) ought to have called for report from assessing officer regarding genuineness of Form 16A or otherwise directed the AO to verify and then allow. But the CIT has allowed the assessee's claim without giving opportunity under Rule 46A of the Income tax rules."

As is evident, four issues arises for our consideration i.e., (i) Disallowance u/s.40A(3) for Rs.262.40 Lacs; (ii) Disallowance u/s.40(a)(ia) for Rs.32.25 Lacs; (iii) Addition on account of inflation of purchases for Rs.101.84 Lacs: (iv) Addition of unaccounted purchases for Rs.129.96 Lacs.

2. The Ld.CIT-DR advanced arguments supporting the case of the revenue. The Ld. CIT-DR submitted that there was violation of Rule 46A. The Ld. CIT-DR also submitted that the assessee is in the habit of

inflating purchase cost. The Ld.AR, on the other hand, submitted that substantial issues, as stated in impugned order, are covered in assessee's favour by the decision of this Tribunal in earlier years. The Ld. AR supported the findings rendered in the impugned order. Having heard rival submissions and upon perusal of case records, our adjudication would be as under. The assessee being resident corporate assessee is stated to be engaged in business of real estate.

### **Assessment Proceedings**

3.1 The assessee admitted income of Rs.426.72 Lacs on turnover of Rs.2848.30 Lacs. The assessee is dealing in real estate and the income arising therefrom constitutes business income for the assessee. The disallowance u/s 40A(3) stem from the fact that the assessee purchased lands in cash aggregating to Rs.263.56 Lacs from various persons which are tabulated in para-4 of the assessment order. In the absence of any plausible explanation forthcoming from the assessee, in this regard, the said amount was added back u/s.40A(3) of the Act.

3.2 The Ld. AO made disallowance u/s.40(a)(ia) aggregating to Rs.54.91 Lacs for want of Tax Deduction at Source (TDS) on certain payments which has been tabulated in para-5 of the assessment order.

3.3 Based on certain enquiries, Ld. AO alleged that there was inflation of purchases for Rs.101.84 Lacs and purchases to the tune of Rs.129.96 Lacs were not accounted for in the books of accounts. During the course of assessment proceedings, the assessee submitted that the business model of the assessee should be appreciated before drawing any adverse inference. It was submitted that all the land transactions were backed by proper evidences in the form of agreements / receipts which

should not be disregarded because of unauthenticated statements. The assessee also submitted that details of enquiries as conducted by Ld. AO were not furnished to the assessee company and no opportunity of cross-examination of persons who gave statements against the assessee-company was provided. The assessee also submitted that it has not directly interacted with the land sellers but it has appointed various agents/ intermediaries through whom all purchases were made and discrepancies as alleged by the Ld.AO were not with respect to transactions between the company and intermediary but between the intermediary and land sellers. The identity of the persons from whom enquiry was made was not established. However, Ld. AO rejected the same and held that the conclusion drawn was based on information furnished by the sellers. In the past years also, the assessee was found to have been inflating the purchase price. The enquiry conducted during the proceedings was restricted to few sample checks and only few discrepancies were found. Accordingly, both these amounts were added back to the income of the assessee.

### **First Appellate Proceedings**

4.1 During appellate proceedings, the assessee assailed impugned additions by way of elaborate written submissions which have been extracted in the impugned order. Regarding disallowance u/s.40A(3), the assessee referred to the decision of Hon'ble Supreme Court in the case of **Attar Singh Gurmukh Singh Vs. ITO (1991) 191 ITR 667** and submitted that provisions of Section 40A(3) were intended to regulate business transaction and to prevent use of unaccounted money and to reduce chance of use of black money for business transactions.

4.2 The assessee also explained its business model by submitting that large corporate requiring large extent of land would approach the assessee with a request to consolidate large land holding in a specified area. The same is done by way of Memorandum of Understanding detailing scope of transaction. Thus, the assessee has to purchase entire area of the land owned by many persons. The role of the assessee was to aggregate entire area of specific land required by its customers, arranging approval for change in land use, execute sale deed in favour of the purchasers. The cost of transfer representing registration cost, stamp duty and documentation shall be borne by the principal. The assessee has to initiate process of procurement of land and acquiring lands by appointing intermediaries (agents) for negotiating with land owners and advancing money to intermediaries who act as agents. The role of such intermediaries is mainly to negotiate and arrange for purchase of parcels of land from various land owners. Once suitable land is identified, the intermediaries remit consideration to such land owners and get executed a stamped receipt from such land owners. The stamped receipt contains name of the land owner, name of agent, extent and particulars of land purchased from land-owners, locality of lands, survey number of lands, amount of consideration received from agent by the land owner etc. The agents would hand over stamped receipt to the assessee. The intermediaries arrange for executing Power of Attorney (POA) to facilitate transfer of such land to the corporate customers directly. Then such intermediaries enter into sale deed on behalf of individual land owners with the corporate customers for sale of land. At times, the corporate customers would insist the assessee to get the land

registered in its name after getting POA from the land owners through the agent and then transfer the land in the name of corporate customers once the sizable land had been acquired. In such a case, on completion of acquisition of sizable tracts of land as desired, the assessee execute deed to transfer the consolidated land to the corporate customers. In the above background, the assessee submitted that its relationship with corporate customers was that of principal and agent. The assessee gets agreed price from big companies for the purchase of land through cheques only. Therefore, there was no scope for any suppression of receipts. All these receipts were through cheques and properly and fully accounted for in the books of accounts. The assessee submitted that said transactions were covered by Rule 6DD(K) which include payment to agents in cash for procurement of goods or services. The assessee submitted that Rule 6DD provides for exclusion of certain cash payments with a view to relax rigors of section 40A(3) where payments are by any person to his agent, who is required to make payment in cash for goods or services on behalf of such person then such payments shall not be hit by the provisions of Section 40A(3) of the Act. In this year, the assessee engaged intermediaries i.e., Mr. C. Sasi & Mr. C. Chandrasekar and others who acted as agent of the assessee in procuring lands from various land owners. The affidavits to that effect were enclosed. It was submitted that payment for purchase of land was paid to land owners through these agents only.

4.3 The assessee also relied on the order of the Tribunal in its own case vide ITA Nos.1570 & 1571/Chny/2015, wherein it was held as under: -

10.1 There is no dispute to the fact that the assessee has no direct dealings with the land owners, The payments were made to land owners through these agents and payments also received by the assessee as a principal, Being so, as the provisions of Rule 6DD(k) of the I. T. Rules, 1962, where the payment is made by any person to his agent, who is required to make payment in cash for services on behalf of such person, the provisions of sec.40A(3) of the Act cannot be applied so as to disallow any portion of the expenditure.

4.4 The assessee further submitted that all the transactions were done by the agents who were entrusted with the responsibility of closing such transactions. As there were innumerable transactions, it was impossible for the assessee to deal with each of the land owners and that intermediary was engaged for each of the village and entire transactions were made through them. The transactions were with villagers / farmers who insisted for cash payment but for which the transaction would not have gone through. Further, in most of the cases, the agents had to pay the land owners in the villages where there were no banking facilities. Therefore, the same would be covered under Rule 6DD(g) also which provide an exception to Sec.40A(3) in case the transactions were carried out in case of inadequate banking facility. The fact that there was inadequate banking facility was supported by copy of rectification order passed by first appellate authority for AYs 2005-06 to 2012-13 dated 20-11-2015 which further refers to the remand report of Ld. AO dated 27-03-2015, wherein it is clearly mentioned in that there were no banking facilities in Eliambedu village and Periakavanam village even as on the date of the report. These were the places where the assessee made payment in this year also.

4.5 The assessee further supported its case by submitting that all the agents have confirmed the transactions and all the transactions are supported by stamped receipts.

4.6 The Ld. CIT(A) concurred with the submissions of the assessee and adjudicated this issue in assessee's favor with following observations: -

4.3.3 I have carefully gone through the facts of the case of the appellant. It is an admitted fact by the A.O that the appellant is a land aggregator on behalf of their large corporate customers and has engaged agents to procure lands in Eliyambedu and Periyakavanam villages from the landowners. The appellant has no dealings with the land owners directly. The A.O. has made the disallowance u/s 40A(3) of the Act on the ground that the appellant has made cash payments to the land owners through its agents. The AR of the appellant has provided the affidavits from the agents (Mr. Sasi and Mr. Chandrasekar) that they are acting on their behalf as an agent and procure the land from various land owners from Eliyambedu and Periyakavanam villages and also the stamped receipts from the respective land owners for payments by them from the agents towards the sale of their lands. The A.R. thus argued that the cash payments made to agents to procure lands from land owners would be covered by the exclusion provided under Rule 6DD(k) of the IT Rules r.w.s 40A(3) of the Act.

4.3.4 It is also pertinent to note that the similar issue has been adjudicated by the Hon'ble ITAT in the appellant's own case (ITA Nos. 1570 to 1576/Mds/2015) dated 19-02-2016 for earlier AYs 2005-06 to AY 2011-12). The Hon'ble ITAT in para 10.1 at page 23 has held as under:

"There is no dispute to the fact that the assessee has no direct dealings with the land owners. The payments were made to land owners through these agents and payments also received by the assessee as a principal. Being so, as the provisions of Rule 6DD(k) of the I.T.Rules, 1962, where the payment is made by any person to his agent, who is required to make payment in cash for services on behalf of such person, the provisions of sec.40A(3) of the Act cannot be applied so as to disallow any portion of the expenditure."

4.3.5 Further, the A.R has also submitted that there are no banking facilities from Eliyambedu and Periyakavanam villages and hence the appellant has no option but to make payment to land owners in cash through their agents. Therefore, no disallowance u/s 40A(3) can be made by virtue of Rule 6DD(g) of the IT Rules r.w.s 40A(3) of the Act. In support of their claim, the A.R. has also provided copy of the **order (ITA Nos.202-208/14-15 for AYs 2005-06 to AY 2011-12) of my predecessor** passed on 20-11-2015, where in it has been admitted the A.O himself after verification vide his remand report dated 27-03-2015 that there are no banking facilities in the Eliyambedu and Periyakavanam villages even as on the date of the report. Thus, it is confirmed by the A.O himself that there are no banking facilities in the areas of Eliyambedu and Periyakavanam villages even till 27-03-2015.

4.3.6 Further, it is also pertinent to note that the similar issue has been adjudicated by the Hon'ble ITAT in the appellant's own case (ITA Nos. 1570 to 1576/Mds/2015)

dated 19-02-2016 for earlier AYs 2005-06 to AY 2011-12). The Hon'ble ITAT in para 10.4 at page 27 has held as under:

"10.4 Further we make it clear that where the payment made by the assessee to the vendors in a village or town, which on the date of such payment is not served by any bank, to any person, who ordinarily resides, or is carrying on his business therein that village or town and that payment should be excluded by invoking the provisions of sec.40A(3) in view of Rule 6DD(j). This view of ours is supported by the decision of the Tribunal, Hyderabad Bench in the case of DCIT vs. Abhinandan Housing Pvt. Ltd. (2014) 42 CCH 75 and in the case of Sahitya Housing Pvt. Ltd. in ITA No.246/Hyd/2011 dated 24.1.2014."

4.3.7 In view of the above decision of the Hon'ble ITAT in the appellant's own case for earlier AYs on identical facts, the appellant gets relief both under Rule 6DD(k) and Rule 6DD(g) of the IT Rules and no disallowance u/s 40A(3) of the Act in connection with the cash payments of Rs.2,62,40,000/- made to land owners through its agents for purchase of lands in Eliyambedu and Periyakavanam villages. However, the A.R has not made any submission towards cash payment made of Rs.1,16,298/- to various vendors towards purchase of wooden statue and other repairs in Tower II project.

4.3.8 Hence, I direct to A.O to restrict the disallowance made u/s 40A(3) of the Act only to the extent of Rs.1,16,298/-. (i.e. Rs.2,63,56,298 - Rs.2,62,40,000)

4.3.9 In view of the above remarks, the appellant's grounds on the issue of disallowance u/s 40A(3) are **partly allowed**.

4.7 Regarding addition of inflation of purchases and unaccounted purchases, the assessee submitted that Ld. AO completely disregarded the business model of the assessee. As per the business model, the assessee has paid sale consideration only through the intermediaries / agent. The evidences being relied upon by Ld. AO with not with respect to the transaction between the assessee and the intermediaries. These transactions were fully and correctly reflected in the books of accounts. The assessee could not be saddled with the discrepancy in the transactions between those land sellers and intermediaries. The conclusion drawn by Ld. AO were merely based upon some discreet enquiries with land owners. These enquiries were conducted at the back of the assessee which was not supported by any written statement or confirmation letter and therefore, the same could not be the basis for any addition. The assessee was in possession of stamped receipts for

consideration received from the land owners towards sale of their lands. Such unrecorded statements by land owners could not be held against the assessee, particularly when opportunity of cross-examination was never provided. The copies of agents receiving sale consideration from the assessee as well as copies of stamped receipts signed by land owners were produced in support of the submissions.

4.8 Accepting the submissions of assessee, Ld. CIT(A) deleted impugned addition of inflation of purchases and unaccounted purchases by observing as under: -

4.4.3 I have carefully gone through the facts of the case of the appellant. It is an admitted act by the A.O that the appellant is a land aggregator on behalf of their large corporate customers and has engaged agents to procure lands in Eliyambedu and Periyakavanam villages from the landowners. The appellant has no dealings with the land owners directly. The A.O has made the additions towards inflated/unaccounted purchases based on the inquiries made to the villagers behind back of the assessee. The AR of the appellant has provided the affidavits from the agents (Mr.Sasi and Mr.Chandrasekar) along with the stamped receipts from the respective landowners for payments received by them from the agents towards the sale of their lands. The appellant has booked the land purchased in their books to the extent of stamped receipts provided by the agents from the land owners. The appellant has provided the table as annexure 10(b) to the written submissions, which shows the details of the land purchased from the land owners on various dates, which are properly accounted as land purchases in their books. The A.R thus submitted that there are no inflated purchases in the books of the appellant, as the stamped receipts from land owners are available to the extent of the value of the land purchase recorded in the books of the appellant.

4.4.4 As regards, the unaccounted purchases are concerned, the appellant has submitted that the A.O has considered only the part of the payment made to land owners and omitted to consider the other payments made, which were listed in the annexure of details of land purchase made by the appellant on various dates. The appellant has provided the table as annexure 10(a) to the written submissions, which shows the details of the land purchased from the land owners on various dates, which are properly accounted as land purchases in their books. The A.R thus submitted that there are no unaccounted purchases in the books of the appellant, as the details of purchases from land owners on various dates are properly recorded in the books of the appellant.

4.4.5 It is also pertinent to note that the similar issue has been adjudicated by the Hon'ble ITAT in the appellant's own case (ITA Nos. 1570 to 1576/Mds/2015) dated 19-02-2016 for earlier AYs 2005-06 to AY 2011-12). The Hon'ble ITAT in para 15.2 at page 33 has held as under:

"It was the plea of the assessee that the assessee acted through intermediaries and most of them appeared before the Assessing Officer and confirmed by filing affidavits that they have received the payment from the assessee and in turn, they made the payment to the vendors/land owners. Being so, in our opinion, to the extent of confirmation filed by the respective intermediaries who transacted the purchase of land, cannot be considered for enhancement in the hands of the assessee.

4.4.6 In view of the above decision of the Hon'ble ITAT in the appellant's own case for earlier AYs on identical facts and also given the fact that the appellant has furnished the affidavits and stamped receipts provided by their agents to substantiate the value at which the purchase of lands are recorded in their books. Further, the agents have confirmed through affidavits the amounts for which the lands were purchased by them from the landowners. Therefore, it cannot be said that the appellant has neither inflated nor unaccounted the purchases of land, in the absence any conclusive material on record to prove otherwise, apart from mere discreet inquiries made by A.O with the landowners.

4.4.7 Hence, I hereby direct the A.O to delete the additions made towards inflated/unaccounted purchases amounting to Rs.1,29,96,000/- & Rs.1,01,84,000/- respectively.

4.9 With respect to disallowance u/s 40(a)(ia), the assessee established that TDS was duly deducted on payment made to one M/s Jaghuste & Co. for Rs.32.25 Lacs. The same was evidenced by Form No.16A and copy of ledger account. Accordingly, the disallowance to that extent was deleted and the remaining disallowance was confirmed.

4.10 Aggrieved by aforesaid adjudication, the revenue is in further appeal before us.

### **Our findings and Adjudication**

5. Upon perusal of business model of the assessee, it could be seen that the assessee is engaged in procuring large parcel of land on behalf of corporate customers. The assessee is required to purchase entire area of land as owned by many persons. To facilitate the same, the assessee has appointed intermediaries / agents who negotiate and act on behalf of the assessee. These intermediaries finalize the deal and make payment to the land owners and obtain stamped receipts which are forwarded to the assessee. The land owners execute power of

attorney in favor of agent / assessee which is then used to execute sale deed in favor of the corporate customers. The assessee receives payment from corporate customers in cheque only and remits the same to the agents as per stamped receipts to settle the account of land owners. The assessee does not directly deal with the land owners but remit payment to agents only. Thus, the agents act on behalf of the assessee to procure goods and services for the assessee and therefore, the transaction would be covered by clause 6DD(K) as held by Tribunal in assessee's own case for earlier years. Nothing is shown to us that the said adjudication is not applicable or the same has been reversed by any higher judicial authority, in any manner. Therefore, this issue is covered in assessee's favor by the earlier decision of the Tribunal. We also concur with the findings in the impugned order that the stated transactions are covered under rule 6DD(g) also since the remand report of Ld. AO dated 27-03-2015 would show that the assessee has dealt in villages having inadequate banking facilities. The said fact also remains uncontroverted before us. Thus, we find no reason to interfere in the impugned order on this issue. The corresponding grounds raised by the revenue stand dismissed.

6. So far as the addition of inflation of purchases and unaccounted purchases is concerned, we find that the same are based merely on presumptions and assumptions on the premise that the assessee is in the habit of suppressing the purchase transactions. These transactions are backed by confirmation of agents, their affidavit and stamped receipts issued by the land owners. The impugned addition is merely based on some discreet enquiry made by Ld. AO at the back of the

assessee from few of the land sellers. No opportunity of cross-examination has been provided to the assessee. In fact, the assessee has not dealt with the land owners directly but the purchase transactions have been affected through intermediaries / agents only. We find that this issue is also covered in assessee's favor by the earlier decision of Tribunal as noted in the impugned order. Therefore, we find no reason to interfere in the impugned order on this issue. The corresponding grounds raised by the revenue stand dismissed.

7. The disallowance made u/s 40(a)(ia) has been deleted by Ld. CIT(A) partially after appreciating the material evidences which are in the shape of Form 16A and copy of ledger account. There is nothing on record to controvert this fact. Therefore, the impugned order could not be faulted with on this issue also.

8. In the result, the appeal stand dismissed.

*Order pronounced on 23<sup>rd</sup> August, 2023*

**Sd/-**

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**

**(MANOJ KUMAR AGGARWAL)**

**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 23-08-2023

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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF