आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE

SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

आ.अपी.सं / **ITA No.156/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2008-09)

Demi Realtors, Flat No.610, 6th Floor, Babukhan Estate, Basheerbagh, Hyderabad – 500 001. PAN : AAFFD9401P.	Vs.	Deputy Commissioner of Income Tax, Circle-6(1), I.T. Towers, Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by:	Shri A.V. Raghuram, Advocate
राजस्व द्वारा/Revenue by:	Ms. T. Vijaya Lakhsmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 07.11.2023
घोषणा की तारीख/Pronouncement on: 05.02.2024

O R D E R

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order of Commissioner of Income Tax (Appeals) – 11, Hyderabad dt.16.03.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 for the assessment year 2008-09.

2. The grounds raised by the assessee read as under :

"1. On the facts and in the circumstances of the case, the order passed by the ld. CIT(A)-11, Hyderabad, is erroneous and illegal, and cannot be sustained in law.

2. The ld. CIT(A) erred in dismissing the appeal in limini without condoning the delay in filing the appeal, for incorrect reasons. The Id. CIT(A) erred in not appreciating the reasons for the delay in proper perspective and in taking a very narrow and prejudiced view, which is unsustainable in law.

3. The ld. CIT(A) ought to have properly appreciated the reasons pleaded by the Appellant in the affidavit filed in support of petition for condonation of delay, and the facts emanating from the asst. order and the financials filed by the Appellant which evidenced that the Appellant did not have sufficient sources as on the date of filing appeal.

4. The ld. CIT(A) erred in sustaining the disallowance of an amount of Rs.24,94,00,000 by the Assessing Officer by invoking provisions of section 40A(3) of the Income Tax Act (hereinafter "the Act"), failing to appreciate that the Appellant had not debited the same in its books of account, and at any rate such amount is not an expenditure of the Appellant. The findings given by the ld. CIT(A) on this issue are incorrect and are unsustainable on facts and in law.

5. The ld. CIT(A) erred in sustaining the disallowance of Rs.21,08,45,001/- made by the AO by invoking the provisions of section 40(a)(ia) of the 1) Act, failing to appreciate that the Appellant has not debited the same in its books of account, and at any rate the said amount is not an expenditure for the Appellant.

6. Without prejudice the above, the Ld. CIT(A) failed to appreciate that the payments are made to the landlords and claimants in the process of acquisition of lands for the DLF and its group concerns, and therefore the provisions of section 40(a)(ia) could not have been invoked. The ld. CIT(A) erred in holding that the above payment of Rs.21,08,45,001 can alternatively be disallowed under section 37(1) of the Act.

7. The various adverse findings of the ld. CIT(A) while adjudicating the disallowance of Rs.21,08,45,001 are incorrect and cannot be sustained on facts and in law.

8. The ld. CIT(A) erred in sustaining the addition of Rs.4.8 crores made by the AO on protective basis under section 40a(ia) of the Act in respect of the amounts paid to Mr.Abdul Salam Mohammed, Mr.Sami Ahmed and Mr.MohdAizaj Ahmed for the alleged non-deduction of tax at source. The findings of the ld. CIT(A) in respect of this issue are incorrect and unsustainable on facts and in law.

9. Without prejudice to the above ground, the ld. CIT(A) failed to appreciate that the sustenance of addition under section 40(a)(ia) of the Act would be double addition as the above

payments are already disallowed by the AO under section 40A(3) of the Act.

10. The ld. CIT(A) erred in sustaining the action of the AO in disallowing the payment of Rs.2,77,09,907 made towards development expenditure as being bogus. The findings of the ld. CIT(A) on this issue are incorrect.

11. The ld.CIT(A) erred in sustaining the disallowance of Rs.8,41,87,239/- made by the Assessing Officer by invoking provisions of section 40(a)(ia) of the Act.

12. The Id. CIT(A) erred in sustaining the addition of Rs.18,47,25,000 made by the AO on the alleged ground of not furnishing the confirmation letters from parties. The ld. CIT(A) as well as the AO failed to appreciate the documents available on record in respect of the above payments. The adverse findings of the Id. CIT(A) on this issue are incorrect and unsustainable on facts and in law.

13. The Id. CIT(A) erred in sustaining the action of the AO in making addition of Rs.13.81 crores as unrecorded cash payment made to Sri V.Ramachandra Rao and M/s. Radha Realty Corporation. The findings of the Id. CIT(A) in respect of this addition are incorrect and unsustainable.

14. The Id. CIT(A) erred in sustaining the action of the AO in making addition of Rs.2 crores alleged to have been paid to Mr.Mirza Iqbal Ahmed and others. The ld. CIT(A) as well as the AO failed to appreciate the evidence on record which suggests that the Appellant has not made the payment of Rs.2 crores.

15. The ld. CIT(A) erred in sustaining the action of the AO in invoking provisions of section 40(a)(ia) of the Act in respect of transfer of land of Ac 10 and 37.5 Guntas to S.Narayana Reddy and 3 others, and in disallowing an amount of land cost determined by the Assessing Officer at Rs.45,90,60,000. The ld. AO as well as ld.CIT(A) failed to appreciate the submissions of the Appellant in this regard and the value arrived at by the DVO on a reference made by the AO.

16. The findings of the id. CIT(A) while upholding the disallowance of Rs.45,90,60,000 are incorrect and cannot be sustained."

2.1. Thereafter, assessee has filed the following additional grounds which read as under :

"1. The ld.AO and ld.CIT(A) have erred in making addition / sustaining addition of Rs.27,09,00,000/- in respect of unsold balance lands of Ac.6.18 guntas to Sri S. Narayana Reddy and others.

2. The ld.CIT(A) having extracted para 46 and 47 of written submission filed by the appellant at page 55 of the impugned

order on the issue of addition of Rs.27,09,00,000/- ought to have decided the issue. The ld.CIT(A) erred in not adjudicating the issue raised in the written submission by the appellant."

3. The captioned appeal was filed by one of the Managing Partners of the assessee firm namely, D.S. Karunakar Reddy, with a delay of 1784 days along with the petition for condonation of delay along with affidavits stating therein the reasons for belated filing of appeal. He submitted that the reason for the delay was due to litigation with respect to a shortfall of payment in self-assessment tax that went on for three rounds and that the same was not willful but due to genuine reasons and due to financial hardships and further submitted that assessee had faced a lot of pressure carrying the burden of payment of disputed tax for this long time.

3.1. The ld. AR for the assessee submitted that the ld.CIT(A) ought to have properly appreciated the reasons pleaded by the assessee in the affidavit in support of a petition for condonation of delay. However, the ld.CIT(A) has taken a very narrow view and that the facts of the assessment order and the financials filed by the assessee clearly show that the assessee firm did not have sufficient sources as on the date of filing of the appeal. In support of the case of the assessee, its Managing Partner also filed an additional affidavit praying the condonation of delay of 1784 days and admission of the appeal for hearing. The relevant portion of the additional affidavit reads as under :

"2. This additional affidavit is being filed to bring certain essential facts to the notice of the Hon'ble Tribunal which were inadvertently omitted to have been considered by the Id. CIT(A) while considering the issue of delay.

3. It is submitted that the Appellant is formed for the purpose of pooling of land for and on behalf of M/s. DLF Commercial

Developers Limited. The partnership firm has not carried on any other business either before or after the transactions involved in the present case. The AO also found the same and observed at page 2 of the assessment order as follows: 'M/s. Demi Realtors a partnership firm was formed to facilitate the purchase of the lands and sale of the same to the DLF Company. Asst. year 2008-09 is the first and last of this firm regarding business activity'. It is submitted that while the Appellant has challenged the findings relating to purchase and sale of lands in the appeal, the undisputed fact is that the previous year 2007-08 is the only year in which the Appellant did business. It is submitted that in spite of this being a search assessment, assessment for the asst. year 2008-09 is the only year for which the assessment was made as there is no business either before or after this year.

4. It is submitted that the Appellant has only one bank account with Axis Bank Limited with Current A/c.No.289010200004978. This was unilaterally blocked by the Axis Bank as subsequent to the present previous year there were no operations. On the request of the Appellant, the Axis Bank has opened another current account with a/c. no.910020001508499 w.e.f. 27.01.2010. The Appellant did not have any other bank account at any point of time except the ones stated above. It is respectfully submitted that the above bank statements which indicated the availability of funds were filed with Id. CIT(A) in the earlier round of proceedings (before Hon'ble CIT(A) Mr.A.K.Satapaty, IRS) and is part of the record (Paper Book - Vol 2-Pg. 236 to 248). As a matter of fact, submissions and all documents were also filed by the Counsel who appeared for the Appellant, then.

4. It can be seen from the bank account statements, by the date of filing appeal, the Appellant had very low bank balance. It is submitted that the subsequent cash deposits were made in the bank by the partners only to make tax payments and not for any other transactions. This was the bank ground in which the Appellant throughout had fought for adjustment of the cash of Rs.2 lakhs seized in the course of search.

5. It is submitted that the id. CIT(A) while considering the issue of delay has not properly appreciated the facts and has not gone through the records. It is submitted that the Appellant had pleaded precarious financial position for the payment of self asst. tax on an affidavit. Without prejudice to the fact that the bank statements as mentioned above, were available on record, the Id. CIT(A), with great respect, ought to have directed the Appellant to establish the assertion in the affidavit if he entertained any manner of doubt considering that magnitude of the matter. It is submitted that the proceedings under the Income Tax Act are not adversarial proceedings. It has been held in many judicial decisions that the Authorities under the Act should help the assessees in granting deserving reliefs and in advancement of justice. It is submitted that the Appellant had no intention to withhold any information from the id. CIT(A) in as much as it had filed detailed material evidences in respect of issues involved in appeal running into several hundreds of pages. However, the submission made by the Appellant in the affidavit is not incorrect. In view of the above, the bank account statements which are filed again now, may kindly be considered while adjudicating the issue of delay.

It is prayed that the Hon'ble Tribunal may kindly consider the present additional affidavit and the bank statements enclosed hereto, for the purpose of adjudicating the issue of delay and pass such other order in the interest of justice. It is prayed that the delay of 1784 may kindly be condoned."

3.2. In support of its case, Ld. AR for the assessee filed written submissions, wherein his submissions regarding condonation of delay read as under :

> *"**SUBMISSIONS ON DELAY***
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> *2. The Appellant in respect of delay, has filed a paper book containing pages 1-50 {filed before CIT(A)}, additional affidavit dated 29.04.2023 (containing pages 1-22 filed before Hon'ble ITAT) bringing out essential facts for adjudication of the issue of delay, and case law paper book containing pages 1 to 52 in support of delay.*
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> *3. This is the third round of proceeding before this Hon'ble Tribunal. In the first two rounds of appeal, the appeal was remitted back to the file of the ld. CIT(A) on the issue of short fall of Rs.1,99,348 in payment of "self- assessment tax".*
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> *4. In the FIRST ROUND of appeal, the ld. CIT(A)-1, Hyd., dismissed the appeal on the issue of non-payment of admitted taxes and as well as delay of 4 days in filing the appeal. The Appellant preferred appeal to the Hon'ble ITAT (ITA.No.334/Hyd/2011). The Hon'ble ITAT finding that non-payment of self assessment tax being curable, has set aside the matter to the file of the ld.CIT(A) holding that till the Appellant pays the self assessment tax the appeal would not be in order, and the Appellant has to seek condonation of delay for the same. The Hon'ble Tribunal also held that the ld. CIT(A) to go into the merits if the Appellant explains the delay.*
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> *4. Pursuant to remand by the Hon'ble ITAT, the ld. CIT(A) considered the issue of adjustment of cash of Rs.2,00,000 seized in the course of search on 17.10.2007, which amount was found in the locker of Managing Partner Sri D.S.Karunakar Reddy. In the SECOND ROUND of proceeding before ld. CIT(A), the Appellant apart from the issue of adjustment of cash seized has also contended that the self-assessment tax does not include 'interest' by relying on definition of word 'tax' and 'interest' as defined in sections 2(43) and section 2 (28A) of the Act. The Appellant, accordingly, contended that the demand already paid covers the tax component and accordingly there is no violation of section 249(4) of the Act. The Appellant, therefore requested the ld. CIT(A) to admit the appeal and adjudicate the same on merits. However, the ld. CIT(A) did not agree with the conte*
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> *ntions of the Appellant. The ld. CIT(A) pointed out that the cash of Rs.2,00,000 seized was adjusted on 05.04.2010 towards the regular taxes, and since there is short fall in payment of admitted tax, the appeal is not maintainable. The Appellant, aggrieved, carried the matter in appeal in the SECOND ROUND to the Hon'ble ITAT. The Hon'ble ITAT vide its order dated 06.12.2013 in ITA.No.649/Hyd/2013 held that the Appellant pursuant to the directions of the Hon'ble ITAT could not have raised the issue as to whether tax includes interest. Since the Hon'ble ITAT held that the Appellant did not comply with its order, and accordingly dismissed the appeal.*
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> *5. Thereafter, the Appellant filed Misc. Application No.125/Hyd/2014 in ITA.No.649/Hyd/2013 bringing to the notice of the Hon'ble ITAT that certain finding given by the Hon'ble ITAT were incorrect and are contrary to the record. The Appellant, apart from pleading that a petition for condonation of delay was filed, requested the order passed by the Hon'ble ITAT on 06.12.2013 to be recalled. The Hon'ble ITAT considering the submissions of the parties, vide its order in MA.No.125/Hyd/2014 dated 28.01.2015, recalled its order dated 06.12.2013. Subsequently, the Hon'ble ITAT vide its order dated 30.09.2016 disposed of Appellant's appeal in ITA.No.649/Hyd/2013,*

afresh. The Hon'ble ITAT considering the fact that the Appellant on 18.12.2014 had paid the balance admitted tax, held that the delay in payment of admitted tax is 'curable defect', and accordingly, has set aside the order of CIT(A) and remitted back the matter to the file of the CIT(A) with a direction to verify the payment of admitted tax by the Appellant; and after considering the application for condonation of delay to be filed by the Appellant for the delay upto the date of payment of the total admitted tax, the CIT(A) shall consider the same in accordance with the law.

6. In the THIRD ROUND of proceedings before the ld. CIT(A), the Appellant filed Petition seeking condonation of delay and also submission on merits. The Appellant in the condonation petition so filed has pointed out to the ld. CIT(A) that the initial delay was only 4 days. The Appellant further pointed out that delay in filing the appeal is 1784 days considering the last of the payments of self asst. tax on 18.12.2014. The Appellant pleaded financial stringency in pursuing the adjustment of cash found. The ld. CIT(A) without appreciating the fact that this was a case of search and except cash of Rs.2,00,000 nothing more was found. The ld. CIT(A) without appreciating the financial liquidity emerging from the bank statement filed on record has held that the delay is not properly explained. The ld. CIT(A) also failed to appreciate that it is not a case where the Appellant was seeking adjustment of cash seized which is impermissible in law. The ld. CIT(A), accordingly, has dismissed the appeal on the ground of delay.

7. It is respectfully submitted that the action of the ld. CIT(A) in dismissing the appeal of the Appellant is incorrect and cannot be sustained for the following reasons:

(i) In the first round of appeal proceedings, the Appellant sought adjustment of Rs. 2 lakhs which was seized in the course of search and seizure proceedings as it did not have sufficient funds with it. This cannot be stated to be illegal or a relief which is impermissible in law.

(ii) In the second round of appeal proceedings, apart from the above adjustment, the Appellant has take a fresh ground that tax as defined under section 2(43) does not include as defined under section 2(28A) of the Act, and therefore since the tax component was already paid, the appeal should be treated as being in order. The Appellant also pleaded for adjustment of cash seized. None of the above acts of/stand taken by the Appellant can be termed as illegal or something which is impermissible in law.

(iii) It is submitted that the Appellant genuinely and rightfully sought for adjustment of cash seized in the course of search under section 132B(1)(i) of the Act.

8. It is respectfully submitted that the delay of 1784 days in the present case is not on account of inaction on part of the Appellant to file the appeal. Therefore, the Appellant submits that the parameters that have to be considered for condonation of delay in the present case is as to whether the Appellant acted in a bona fide manner in seeking adjustment of cash of Rs.2 lakhs under section 132B(1)(i) of the Act, which was seized in the course of search, and whether the contention raised by the Appellant that 'tax' does not include 'interest' is impermissible in law, and also whether the Appellant had the liquid money to pay the admitted tax of Rs.2 lakhs (as the adjustment sought for was denied).

9. It is submitted that in so far as the adjustment of tax is concerned, the provisions of section 132B(1)(i) of the Act requires the adjustment of cash to existing taxes. It is submitted that this action of adjustment has to be made without even a request from the assessee. It is submitted that once the assessment order is passed, the self-assessment tax, if any due, would become 'any existing liability under this Act' or the amount of liability determined on completion of assessment or reassessment or re-computation, as envisaged in Section 132B(1)(i) of the Act. The Appellant in this regard three orders passed by Hon'ble ITAT Benches viz., (i) ACIT Vs. Narendra N. Thacker [(2016) 45 ITR Trib 188 (Kol)]; (ii) unreported judgement in ACIT Vs. Sajjan Singh and (iii) unreported order in Arun Bansal, Delhi Vs. ACIT, Delhi. The copies of above orders are already placed on record.

10. It is submitted that, as per the orders cited above, the cash seized can be adjusted against the self-assessment tax due, as it is an existing tax liability. It is submitted that this was what the Appellant sought for. Even otherwise, once the assessment is made, the self-assessment tax becomes part of tax determined, and the cash seized ought to be adjusted against the said liability. Since, self assessment tax became part of existing liability any adjustment of cash seized against the existing tax liability would satisfy the requirement of payment of self assessment tax. In the present case, the cash of Rs.2 lakhs seized was adjusted on 05.04.2010. Therefore, if the above scenario is concerned, the delay would be 66 days only.

11. The next contention which was urged by the Appellant was that the self-assessment tax would take within its fold only 'tax' but not 'interest'. This submission was made by the Appellant in the second round of proceedings before ld. CIT(A) as well as Hon'ble ITAT. The Hon'ble ITAT was not with the Appellant only on the ground as by then, it had, in FIRST ROUND of proceedings directed to pay the entire tax including tax arrived at as tax due as per the ROI. However, the fact remains that this is a legal ground available to the Appellant otherwise. As a matter of fact Bombay High Court in the case of CIT Vs. Manoj Kumar Beriwal (316 ITR 218) held that the term 'tax' as defined under section 2(43) of the Act does not include the term 'interest' as defined under section 2(28A) of the Act.

12. In the THIRD ROUND of proceedings before ld. CIT(A), the Appellant pleaded the ground of financial stringency. The Appellant respectfully submits that the AO in the asst. order in the middle of page 2 of his order has observed that "Demi Realtors a partnership firm was formed to facilitate the purchase of lands and sale of the same to the DLF company. Asst. year 2008-09 is the first and last year of this firm regarding business activity. It has not done any business other than the above purchase of the lands." The Appellant in the additional affidavit filed before the Hon'ble ITAT in the present proceedings has submitted the only bank account it operated for its operations and pointed out to the fact that all the funds were subsumed by the business by 1st October, 2007 and the closing balance on the said date was Rs.16,039. This account was closed by the banker on 26.12.2008. It is submitted that, it was in this back ground, it was pleaded before the ld. CIT(A) that there was financial stringency which is one of the reasons that compelled to seek adjustment of cash seized against self asst. tax.

13. It is submitted that the acts of the Appellant in raising the contentions as listed out were bona fide and it cannot be said that they are illegal or not at all germane to the issue or impermissible in law. Therefore, it is submitted that the Appellant acted in a bona fide manner and had no willful intention to file appeal, belatedly.

14. It is submitted that the Hon'ble ITAT in numerous orders had held that the non-payment of self-assessment tax is a 'curable defect', and is a procedural error. The Hon'ble Supreme Court in the case of DIT (Int.Taxn.) Vs. Western Union Financial Services Inc {(2023) 333 CTR (SC) 450} while deciding the Revenue Appeals which had a delay of 1110, 1117 and 991 days before the High Court, held that delay has to be condoned considering the significance of question of law involved in the appeal. In the present case, the AO had made high pitched assessment making addition of Rs.123 crores to the admitted income of Rs.2,01,42,188. Considering the entire gamut of facts and contentions submitted above, it is submitted that the Appellant's grounds on merits are not adjudicated by the appellate authority. It is respectfully submitted that the appeal proceedings before the authorities under the Act, in broader sense, are continuance of assessment proceedings to determine the correct tax liability of an assessee. Therefore, the Appellant prays that the delay deserves to be condoned and the appeal be decided on merits.

It is prayed that the delay of 1784 days before ld. CIT(A) may be condoned, and since the ld. CIT(A) has already passed a detailed order running into 90 pages it is prayed that the Hon'ble ITAT may kindly adjudicate the appeal on merits."

3.3. In support of the case of assessee, ld.AR has relied upon the following decisions :

1. ACIT Vs. Narendra N Thacker – ITAT Kolkata Bench – dt.28.09.2015.
2. ACIT Vs. Shri Sajjan Singh – ITA No.6640/Del/2016 dt.18.01.2018.
3. Arun Bansal Vs. ACIT – ITA No.2615/Del/2022 dt.29.05.2023.
4. Esha Bhattacharjee Vs. Managing Committee of Raghunathapur Nafar Academy and others – (2013) 12 Supreme Court 649.
5. Director of Income Tax (International Taxation) Vs. Western Union Financial Services Inc. dt.07.07.2023 of Hon'ble Supreme Court.
6. D.S. Karunakar Reddy Vs. ACIT in ITA No.4/Hyd/2016 dt.14.02.2018.

7. CIT Vs. Manojkumar Beriwal – ITA No.85 of 2008 dt.26.06.2008 of High Court of Bombay.

4. On the other hand, ld. DR strongly opposed the assessee's petition for condonation of delay in filing the appeal and contended that the assessee firm was litigating at every stage but was not interested in paying self assessment tax. Thereafter, firstly, ld. DR has drawn our attention to page 66 of the order of ld.CIT(A) wherein the ld.CIT(A) has given a number of opportunities to the assessee to substantiate the petition for condonation of delay. Finally, he submitted that the order of ld.CIT(A) is in accordance with the law.

4.1. In support of its case, Revenue filed written submissions and the relevant portion of the same reads as under :

> ***"A. CONDONATION OF DELAY OF 1784 DAYS***
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> *1. The CIT(A) vide order dated 04.03.2011 declined to admit the appeal for nonpayment of admitted tax u/s 249(4) of I T Act and for delay in filing the appeal - dismissed in limine.*
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> *2. The Hon'ble ITAT vide order dated 20.01.2012 in ITA no: 334/1-1/2011 set aside the matter to CIT(A) to verify the payment of admitted tax.*
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> *3. The CIT(A) vide order dated 19.02.20 13 dismissed the appeal. It was held that the appeal is not legally valid and cannot be admitted both on account of non-payment of taxes u/s 249 of the IT Act as well as on account of continuing delay in filing of the appeal.*
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> *4. The Hon'ble ITAT vide order dated 06.12.2013 in ITA no: 649/H/2013 dismissed the assessee's appeal. It was held that the appellant had not complied with the directions of the Hon'ble tribunal given in the earlier occasion and that the bench was of the opinion that the grounds raised by the appellant have no merit and the upheld the order of the CIT(A).*

5. THE LAST PAYMENT OF SELF ASSESSMENT TAX OF Rs 2,00,000/-WAS PAID BY THE ASSESSEE ON 18.12.2014

6. The Hon'ble ITAT vide MA order dated 28.0 1.2015 in 125/1-1/2014 recalled their order.

7. The Hon'ble ITAT vide order dated 30.09.20 16 in ITA 649/1-1/2013 and remanded the issue to the file of CIT(A) with a direction to verify the payment of admitted tax by the assessee after considering the application for the condonation of delay to be filed by the assessee for the admitted tax. The CIT(A) shall consider the same in accordance with the law on merits and if the delay is condoned by the CIT(A), then the CIT(A) shall adjudicate the appeal on merits.

8. The CIT(A) vide order dated 16.03.2023 dismissed the appeal on condonation of delay and as well as on the merits of the case.

9. Against this backdrop the present appeal in ITA no: 156/1-1/2023 is before the Hon'ble ITAT, Hyd

• Search and Seizure operations u/s 132 of IT Act were conducted on assessee on 17.10.2007.

Written submissions on adjustment of seized cash:

• It was stated by the learned AR that the cash seized of Rs 2 lakh was available tar adjustment of taxes on the date of filing of appeal on 03.02.2010.

• Sec 13213(1)(i) proviso I mandates that the assets seized under Sec 132 of the IT Act can be adjusted against the amount of any existing liability under this act, only when the person concerned makes an application to the AO within 30 days from the end of the month in which the asset was seized.

• Proviso to Sec 13213(l)(i) was amended wef 01.06.2003. Prior to the amendment, there was no requirement for the person to make an application to the AO for release or adjustment of seized asset. Thus, wef 01.06.2003, it has become compulsory for an application to be made to the AO within the prescribed time, failing which adjustment of taxes against existing liability is not made.

• In the instant case, no such application is made by the assessee before the AO for adjustment of existing liability.

• On the contrary, the assessee vide its letter dated 17.02.2010 to DCIT, Central circle-6, Hyd had given a no objection for adjustment of the seized cash of Rs 2 lakh against the demand relating to M/s Demi realtors and the same was adjusted on 05.04.20 10 towards regular tax since asst order was passed on 29.12.2009. (Copy of the letter of ACIT, Central circle6(1), Hyd enclosed as Annexure 1)

• Case law: ABCAUS 2300 (2018)(04) AC: The instant revision petition filed before the Addl Sessions judge against the order passed by the CJM/Trial court against the revisionist issuing charge sheet under sec 276C of the Income Tax Act, 1961. Prosecution u/s 276C for late deposit of self assessment tax. Late deposit of tax after the expiry of the stipulated period would not wipe out the offence.

Written submissions on condonation of delay petition:

• The assessee has paid admitted tax with a delay of 1784 days. The curing of defect by payment of admitted taxes beyond the limitation period prescribed u/s 249(2) tantamounts to delay in filing appeal.

• The assessee has filed an affidavit explaining reasons for the delay in filing the appeal by 1784 days as not being willful and of precarious financial liquidity as reasons. In this context, it is being submitted that the reasons given by the assessee is very general in nature and not backed by sufficient evidence to explain the inordinate delay.

• As cited above, while the late deposit of self asst tax itself is demonstrated as a prosecutable offence, the consequent delay in filing of appeal should therefore not be condoned, and much less such inordinate delays of 1784 days for no genuine and convincing reasons should be condoned. Relying on following citation, delay of 1784 days should not be condoned."

Case laws:

1. *Arvinder Singh 79 Taxmann.com 332 (Delhi) 2017 – when reason for extraordinary delay of 1271 days in filing appeal was not convincing, delay cannot be condoned.*
2. *Ajmer Sharaf & Co., Vs. ITO 61 Taxmann.com (Madras) – Each day delay needs to be explained – 754 days delay rejected.*
3. *Vama Apparels (I) Pvt. Ltd. Vs. ACIT, 102 Taxmann.com 398 (Bombay), 2019- delay of 507 days rejected."*

5. We have heard the rival submissions and perused the material on record. Before we decide on the issue, it is essential for us to reproduce the finding of ld.CIT(A) in this regard. The finding of the ld.CIT(A) is as under :

"7. Decision:

A search and seizure operation under Section 132 of the I.T. Act, 1961 was conducted at the business premises of the appellant on 17.10.2007. The appellant filed return of income for the assessment year 2008-09 on 07.07.2009, declaring an income of Rs.2,01,42,190/-. The Assessing Officer [the then DCIT, Central Cirlce-6, Hyderabad] completed the assessment u/s 143(3) dated 29.12.2009 determining the total income of the appellant at Rs.125,74,44,435/-. Aggrieved, the appellant preferred appeal before the CIT(A)-I, Hyderabad, who vide his order in ITA

No.1185/CC-6,HYD/CIT(A)-I/ 09-10 dated 04.03.2011 declined to admit the appeal for adjudication holding that the appeal filed by the appellant for the assessment year 2008-09 is not liable to be admitted both for non-payment of admitted tax as per the provisions contained in section 249(4) and also for delay in filing the appeal, and dismissed the appeal in limine.

The appellant preferred further appeal before the ITAT. The ITAT, Hyderabad 'A' Bench, vide order in ITA No. 334/11yd/2011 dated 20.01.2012 set aside the matter to the file of the CIT(A) to verify whether as on the date of the order of ITAT (i.e., 20.01.2012), the appellant paid the admitted tax and if the appellant is found to have paid the admitted taxes aggregating to Rs.77,99,676, the CIT(A) may dispose of the appeal before him afresh, on the merits of the issues raised therein, after considering the explanation of the appellant, if any, for the delay in the filing of the appeal.

Consequent to set aside by ITAT, in the second round of appeal, the CIT(A)-III, Hyderabad vide his order in ITA No.01012/DCIT CC-6/CIT(A)-III/ 2012-13 dated 19.02.2013, after elaborate discussion, held that the appeal is not legally valid and cannot be admitted both on account of non-payment of taxes as per section 249 of the income tax act as well as on account of the continuing delay in filing of appeal. The appellant again preferred appeal before the ITAT. The ITAT, Hyderabad 'A' Bench vide order in ITA No. 649/Hydj2013 dated. 06.12.2013 dismissed the appeal holding that the appellant in the present case had not complied with the directions of the Tribunal given in the earlier occasion and that the Bench was of the opinion that the grounds raised by the appellant have not merit and upheld the order of the CIT(A) and dismissed the grounds raised by the appellant.

The ITAT, Hyderabad 'A' Bench, vide order in M.A. No. 12571-1yd/2014 [arising out of ITA No. 649/Hyd/2013) held that "After going through the miscellaneous application filed by the assessee, we find that there appears certain mistakes apparent on record. We find it necessary to recall the order of the ITAT and direct the registry to post the case for a fresh hearing and inform the parties accordingly." Subsequently, the ITAT heard the appeal and passed orders in ITA No. 649/Hyd/2013 dated 30.09.2016 remanding the issue to the file of CIT(A) vide paragraph 5 thereof, which is reproduced below for ready reference:-

'Having regard to the rival contentions and the material on record, we find that under sub section (4) of section 249 of the I.T. Act, an assessee is required to pay the admitted tax before filing of the appeal before the CIT (A). Admittedly, the assessee has failed to comply with this condition. After filing of the appeal, assessee has sought adjustment of the seized cash towards the shortfall of the tax demand, but since the seized cash has already been adjusted towards the pending ax demand, the same was not adjusted and the shortfall continued to remain. Since the assesses has paid the balance of the tax subsequently and respectfully following the decision of the Coordinate Bench in the case of T. Kishan vs. ACIT (Supra), we deem it fit and proper to remand the issue to the file of CIT (A) with a direction to verify the payment of admitted tax by the assesses; and after considering the application for condonation of delay to be filed by the assesses for the delay upto the date of payment of the total of the

*admitted tax, the CIT (21) shall consider the same in accordance with the law on merits and if such delay is condoned by the CIT (A), then the CIT (A) shall adjudicate the appeal of the assesses on merits. Needless to mention that the assesses shall be given a fair opportunity of hearing on all the above issues.**

Thus, the appeal is taken up for consideration before proceeding ahead on merits as to the admissibility of the appeal on two counts — one verification of payment of admitted tax by the assessee and if that is found correct then to con der the petition for condonation of delay.

As regards the payment of admitted tax, the appellant filed the affidavit which reflects that the balance payment of Rs.2,00,000/- was paid on 18.12.2014. The copy of the affidavit has been filed by the appellant. The system reflects that the payment of Rs.2 lakhs was made on 18.12.2014. The total position of the payment of tax and interest due as per return of income is as under :

Total amount of tax and interest due as per return of income		*Rs.77,99,676*
Self assessment tax paid		
(i)	*Advance tax paid*	*Rs.36,00,000*
(ii)	*Payment on 29.01.2010*	*Rs.18,46,328*
(iii)	*Payment on 03.02.2010*	*Rs.12,00,000*
(iv)	*Payment on 24.03.2010*	*Rs.9,54,000*
(v)	*Payment on 18.12.2014*	*Rs.2,00,000*
	Total self assessment tax paid	*Rs.78,00,328*

From the above it seems that the self-assessment tax has been paid on 18.12.2014. It is important to note that the appellant has gone through multiple rounds of litigation and only paid the balance amount of Rs.2,00,000/- on 18.12.2014 and stated that it was under the impression that the Rs.2,00,000/- lying in the PD account of CIT was available for adjustment at the time of filing of original appeal which has a delay of only 4 days.

The appellant has not brought out any financial hardship or any other bonafide reason for non-payment of taxes and that too after a mammoth delay of 4 years in making the full payment. In view of the same, the delay being 1784 days, since the original appeal date to be filed on account of the

payment of self-assessment tax which the appellant was duty bound to pay while filing the return and is a prosecutable offence.—The appellant has gone through various stages of litigation to restore the appeal but did not bother to pay the sum of Rs.2,00,000/- which was outstanding for 4 years which reflects callous approach on the part of the appellant.

In the original condonation petition, the appellant took a plea that it was confused regarding the calculation was completely negated by the then CIT(A) noting that the tax payable on the returned income is already available on the return itself and there is no need for separate working. And there was no reason which was beyond the control which could be accepted. The appellant claimed that he had paid Rs.18,46,328/- on 29.01.2010 and after that the appeal was filed.

It is seen from the table above that subsequent payments have been made on 03.02.2010, 24.03.2010, and the sum of Rs.2,00,000/- on 18.12.2014.

The CIT(A) noted that the provisions of Sec. 249(4)(a) applies and there is no discretion in that regard and, therefore, compounded with section 249(3) the appeal was dismissed. The appellant filed an appeal with the ITAT and the ITAT vide order dated 20.01.2012, it was further noted in the appellate order that there was still a short payment of Rs.1,99,348 and the DR stated that if the proof for the said sum is furnished, the Hon'ble Tribunal may set aside the case. The Hon'ble Tribunal noted that the CIT(A) may consider the condonation only if the appeal becomes valid only after payment of due taxes and thus with the directions the appeal was disposed of.

In consequence to the said -order, the CIT(A) passed an order dated 19.02.2013 wherein he noted that the sum was still not paid and the appellant stated that the outstanding should have been adjusted against an amount of Rs.2,00,000/- seized during the course of search. The Id. CIT(A) discussed in detail that none of the contentions of the appellant have been found correct and has discussed the following in the order in which discussing the conduct of the appellant:-

'2.6 Further investigation into the facts of the case points out that the appellant never wrote to the assessing officer to adjust Rs. 2 Zakhs lying in the PD account against its shortfall pertaining to taxes on its declared income. There is not a single letter on record written by the appellant. In fact the appellant was consistently denying any liability to make any further payment. It is interesting to note that an amount of Rs. 2 lakhs had been seized from the bank locker of Mr D S Karunakar Reddy. Thereafter, Mr RKS Varma, Director of Pink Estates Private Limited wrote a letter to the Deputy Commissioner of income tax, Central circle 6 stating that they had no objection if this amount was adjusted against the demand raised against the appellant. This letter was written in response to the request by the then assessing officer to adjust the cash lying against the demand raised of Rs. 55 crore as discussed above. This letter is reproduced below :-

PNK Estates Pvt. Ltd.

Corp. Off : Narmada Apartments,
7-1-621/321 83 322, Flat No. 104, 415/ 3RT,
Near -; R Nagar Community Hall
S.R. Nagar, Hyderabad - 38.
Ph 040-23707086, 23814636
E-mail: -inkestates(b)-Rediff mail.com

Date: 17.02.2010

To

The Deputy Commissioner of Income Tax
Central Circle 6
Aayakar Bhavan
Hyderabad.
Respected Sir,

Sub: No Objection to the Adjustment of Seized Cash -Assessment Year 2002-03 to 2008-09

Ref PAN No. AABCP 4222 D.

** ***

With reference to the above, we submit that during the course of search proceedings the Deputy Director of Income Tax has seized an amount of Rs.2,00,000/- (Rupees Two Lakhs only) from Mr D S Karunak.ar Reddy's locker. The above amount relates to M/s Demi Realtors only and we have no objection to adjust the same from the Demand relating to them.

Kindly acknowledge the same and do the needful

Thanking you sir

Yours faithfully

For PINK ESTATES PRIVATE LIMITED"

"2.7 It is clear from above that it is not the _appellant who had been requesting the income tax Department for adjustment of the above taxes, rather the facts are just the reverse. Therefore, the argument of the appellant that it had been constantly requesting the income tax Department for adjustment of Rs. 2 lakhs is not based on fads and is actually contrary to facts.

And finally concluded in para 2.10 as under:-

'2.10 A plain reading of the above petition shows that the appellant has explained the delay in filing of appeal only for 2 dctsi.4eritp to 3.2.2010. Firstly, as I have already held, the delay in filing of appeal continues until date as taxes have not been paid. However for academic reasons even if it is considered that the appellant had paid Rs. 2 lakhs on 5th of April 2010, as per the directions of the honorable ITAT the delay in filing of appeal lies until this date i.e. 66 days, The appellant has not even attempted to explain the delay or to even acknowledge the delay. Therefore, even for this reason the appeal cannot

be admitted. Further, as per the order of the CIT(A) referred to supra it is clear that the appellant had then contended that the reason for delay in filing of appeal was the delay in payment of admitted tax. As rightly pointed out that order this cannot be taken as a valid reason for delay in filing of appeal."

On the dismissal by the CIT(A), the appellant again filed an appeal with the Hon'ble ITAT who passed an order 06.12.2013 and noted as under in para 14.2:

'14.2 On receipt of the order of the Tribunal, the CIT(A) took up the case for hearing. The assessee pleaded before he CIT(A) that there was a seized cash of Rs. 2,00,000/- relating to the assessee, which is pending for adjustment and if the same is adjusted, there is no deficiency in payment of admitted tax. However, the facts remains that the seized cash was adjusted on 05/ 04/ 2010, which is evident from the letter of DC1T, Central Circle — 6, Hyderabad, dated 08/02/2013, which is extracted by the CIT(A) in the impugned order at page 4. We find that the assessee did not take any pains to file condonation petition before the CIT(A) as the appeal was filed before the CIT(A) as the appeal was filed before the CIT(A) with a delay of 66 days. The CIT(A) has to follow the order of the Tribunal in true spirit as the same is binding o him unless it was reversed by the Higher Forum. !n the present case, earlier order of the Tribunal is in force, as it is not reversed by Higher Forum and also nothing on record to suggest that the assessee is filed any appeal against that order. Being so, in stead of complying with the directions of the Tribunal, the assessee is arguing before us in the second round of litigation that the admitted taxes u/s 249(4) does not include interest liability and also arguing against the consequential order passed by the C1T(A). As such the assessee cannot reargue the issue which was decided by the Tribunal in an earlier occasion. Since the assessee in the present case has not complied with the directions of the Tribunal given in the earlier occasion, we are of the opinion that the grounds raised by the assessee have no merit and accordingly we uphold the order of the C1T(A) and dismiss grounds raised by the assessee."

And the same was dismissed. The appellant then filed a Miscellaneous petition which was pronounced 28.01.2015 wherein the order was recalled and a final order was passed on 30.09.2016 and has passed the following directions in the para 5 of the order:-

> *'Having regard to the rival contentions and the material on record, we find that under sub section (4) of section 249 of the LT. Act, an. assessee is required to pay the admitted tax before filing of the appeal before the CIT (A). Admittedly, the assessee has failed to comply with this condition. After filing of the appeal, assessee has sought adjustment of the seized cash towards the shortfall of the tax demand, but since the seized cash has already been adjusted towards the pending tax demand, the same was not adjusted and the shortfall continued to remain, Since the assessee has paid the balance of the tax subsequently and respectfully following the decision of the Coordinate Bench in the case of T. Icishan vs. ACIT (Supra), we deem it*

> *fit and proper to remand the issue to the file of CIT (A) with a direction to verify the payment of admitted tax by the assessee; and after considering the application for condonation of delay to be filed by the assessee for the delay upto the date of payment of the total of the admitted tax, the CIT (A) shall consider the Same in accordance with the law on merits and if such delay is condoned by the CIT (A), then the CIT (A) shall adjudicate the appeal of the assessee on merits. Needless to mention that the assessee shall be given a fair opportunity of hearing on all the above issues."*

The appellant has filed an affidavit with regard to condonation of delay. The first appeal was filed after a delay of 4 days without payment of admitted tax and after the full payment of outstanding admitted tax on 18.12.2014 the consequent delay is of 1784 days. It is seen that the whole delay is on account of non-payment of taxes by the appellant and aggressive litigation, wherein the appellant was found at fault in its submissions and also trying to give a bonafide impression of adjustment of seized cash, when the facts recorded by the appellate authorities, is that the appellant was aware that the d cash has already been adjusted.

Therefore, even the concept of bonafide impression is primarily wrong and none of the reasons have been brought out for the condonation of delay regarding financial hardship. The appellant was litigating at every stage but was not interested in making the payment of tax, especially when the appellant is dealing with huge volumes of money as compared to the tax outstanding, There is no case brought out by the appellant to justify the condonation of delay for the payment of self-assessment tax. There has been an explicit observation by the Hon'ble ITAT regarding the condonation of delay. In the affidavit filed by the appellant, the first ten paragraphs only discuss the history of litigation and the appellant has selectively omitted the observations regarding the claim of mis-impressions of the appellant being not bonafide. The appellant effectively sums up in para 11 regarding the condonation as under:-

> *"11. As could be seen from the above, the delay in payment of self assessment tax resulting in consequential delay in filing the appeal by 7 784 days is not willful, and is for genuine reasons. It is respectfully submitted that the Appellant's precarious financial liquidity has compelled him to pursue the litigation w.r.t. payment of self asst, tax, which was ultimately paid on 18.12.2014. It is submitted that the Appellant did not stand to gain any advantage on account of developments that resulted on account of non-payment of self asst. tax. On the contrary, the Appellant had faced lot of pressure carrying the burden of payment of disputed tax for this long time."*

There is again no basis, for condonation but for sympathy and playing the victim card. The appellant is not even humble in the admission of the same. Therefore, there is no basis for condonation of delay and no case of financial hardship has been brought out in the submission made by the appellant. The appellant has used a word precarious financial hardship but not a single document in this regard to support the same has been submitted in spite of multiple rounds of litigation, wherein the appellate authorities have been benevolent and have been giving specific directions to comply with tax payments. Therefore, there is no basis for the condonation of delay on account of financial hardship with regard to the delay of payment of taxes. In view of the same, after the examination of submission given by the appellant the appeal is not condoned on account of delay.

However, even on merits, in spite of the fact that the appellant further failed to substantiate the petition for condonation of delay, there seems to be not much compliance in response to the various opportunities given which are brought out as under:

Date	Remarks
03.05.2017	Appeal filed
24.01.2020	The appeal notice was sent to through email mentioned in Form no.35 and the case was fixed for hearing on 04.02.2020
04.02.2020	No compliance
12.05.2020	Fresh hearing notice with DOH on 20.05.2020, issued
20.05.2020	No compliance
10.08.2020	Fresh hearing notice with DOH on 18.08.2020 issued
18.08.2020	No compliance
04.01.2021	Fresh hearing notice with DOH on 19.01.2021 issued
18.01.2021	Appellant filed an adjournment letter
30.09.2021	Fresh hearing notice with DOH on 05.10.2021 issued
05.10.2021	Appellant filed an adjournment letter
10.11.2021	Fresh hearing notice with DOH on 17.11.2021 issued
17.11.2021	Appellant filed an adjournment letter
16.12.2021	Fresh hearing notice with DOH on 22.12.2021
22.12.2021	Appellant filed an adjournment letter
01.04.2022	Fresh hearing notice with DOH on 08.04.2022 issued
08.04.2022	Appellant filed submissions
13.04.2022	Appellant filed further submissions
08.03.2023	Fresh hearing notice with DOH on 15.03.2023 issued
15.03.2023	The appellant replied to consider the submissions filed earlier.

As already stated, it is seen that the appellant, even during the submissions made, has not further elaborated on the petition for condonation of delay and has submitted on various issues in which the additions have been made by the AO. It is seen that the appellant has submitted the paper book in 669 pages along with written submissions which are considered for adjudication on merits."

5.1. To appreciate the delay in depositing the admitted tax by the assessee, before filing the appeal, it is essential to record some of the important dates and events which will help to understand the case of both parties.

Date	Particulars
29.12.2009	The assessment order was passed by the Assessing Officer computing the income of the assessee for Rs.125,74,44,335/-. The Assessing Officer has mentioned Rs.36,00,000/- was paid by the assessee as advance tax to the Revenue.
31.12.2009	Date of service
30.01.2010	Appeal was filed before ld.CIT(A) by the assessee.
03.02.2010	Date of appeal filed before ld.CIT(A) (4 days delay)
04.03.2011	The ld.CIT(A) dismissed the appeal as the assessee has not paid admitted tax liability. The finding of the ld.CIT(A) is given in para 2 of his order, which is to the following effect : "2.0 Before going into the details of the grounds of appeal, I consider it necessary to discuss the admissibility of the appeal as per the provisions of section 249(4) of the IT Act. It is found from the assessment record that the appellant had filed the return of income declaring a total income of Rs.2,01,42,190/- on which the total tax payable was Rs.41,99,680/- after adjustment of advance tax of Rs.36,00,000/-. The appellant has paid Rs.**18,46,328/-** on 29.01.2010 and **Rs.12,00,000/-** on 03.02.2010. The appeal was filed on 03.02.2010. Accordingly, on the date of filing of the appeal, Rs.11,53,352/- was still pending to be paid by the appellant. **Apparently, the amount lying with the Department was Rs.2 lakhs, which was adjusted in the month of April 2010**. Even considering this amount, an amount of Rs.9,53,352/- was still outstanding to be paid on the date of filing of the appeal, which incidentally was filed late. As far as compliance with the provisions of section 249(4)(a) of the I.T. Act is concerned, it is evident that the appellant had not made payment of admitted tax on returned income before the filing of appeal on 03.02.2010. The provisions contained in section 249(4)(a) of the I.T. Act, are of mandatory in nature, as held by Hon'ble Madras High Court in a recent decision in the case of S. Alagarsamy Vs. ITO (296 ITR 43). The Hon'ble High Court observed that payment of tax due on income returned by the assessee before filing an appeal against the assessment order is a condition precedent, and non-compliance of same renders the appeal not maintainable. Thus, the above judicial pronouncement also supports the view that provisions of section 249(4)(a) of the I.T. Act are mandatory in nature. Since the appellant has not paid the admitted tax before the due date of filing of the appeal, in my view, the appeal is not admissible for adjudication."
04.03.2011	Date of service
13.04.2011	Date of 1st appeal filed before ITAT.
20.01.2012	Date of ITAT order in 334/Hyd/2011. The Tribunal had

	considered the rival contentions of the parties and recorded a finding of fact as under : "We have considered the rival submissions and perused the impugned order of the Commissioner (Appeals) and other material on record. It is evident from the copy of the return of the assessee filed before us that the net tax on the income admitted in the return filed by the assessee is Rs.68,46,330/- and together with interest of Rs.9,53,346/- due thereon, the total amount of tax and interest payable by the assessee worked out to Rs.77,99,676/-. The position with regard to payment of this amount by the assessee is as follows : (A) Total amount due as per return – Rs.77,99,676. (B) Amounts paid : (a) Advance tax paid as per return – Rs.36,00,000 (b) Payment on 29.01.2010 – Rs.18,46,328 (c) Payment on 03.02.2010 - Rs.12,00,000 (d) Payment on 24.03.2010 – Rs. 9,54,000 Total amount paid - **Rs.76,00,328** Short fall in payment of taxes on admitted income (A-B) (Viz. Rs.77,99,676 – 76,00,328) = Rs.1,99,348 **We find that there is a shortfall in the payment of admitted taxes by Rs.1,99,348/-.** The learned departmental representative submitted that if the assessee is able to furnish the evidence of payment of the above short-fall of Rs.1,99,348/- this Tribunal may set aside the issue to the file of ld.CIT(A), for fresh adjudication of the appeal by him on merits thereof. Considering the facts and circumstances of the present case and the decision of the Tribunal in the case of D.S. Karunakar Reddy Vs. DCIT in ITA No.402/Hyd/2011 for the assessment year 2008-09 relied upon by the learned counsel for the assessee before us, we are inclined to set aside the matter to the file of the CIT(A), to verify whether as on the date of this order, the assessee paid the admitted tax. If the assessee is found to have paid the admitted taxes aggregating to Rs.77,99,676/- the ld.CIT(A) may dispose of the appeal before him afresh, on the merits of the issues raised therein ……"
19.02.2013	Date of ld.CIT(A) order
19.02.2013	Date of 2nd CIT(A) order, the ld.CIT(A) in para 2.10 had dismissed the appeal of assessee by holding as under : "2.10 A plain reading of the above petition shows that the appellant has explained the delay in filing of appeal only for two days i.e., up to 03.02.2010. Firstly, as I have already held, the delay in filing the appeal continues until date as taxes have not been paid. However, for academic reasons, even if it is considered that the appellant has paid Rs.2 lakhs on the 5th of April, 2010, as per the direction of the Hon'ble ITAT, the delay in filing of an appeal lies until this date, i.e., 66 days. The appellant has not even attempted to explain this delay or to acknowledge the delay. Therefore, even for this reason, the appeal cannot be

	admitted. Further, as per the order of the ld.CIT(A) referred to supra it is clear that the appellant had then contended that the reason or delay in filing of appeal was the delay in payment of admitted tax. As right pointed out in that order this cannot be taken as a valid reason for delay in filing the appeal."
06.12.2013	Feeling aggrieved by the order of ld.CIT(A) dt.19.02.2013, the assessee preferred the appeal before the Tribunal in ITA 649/Hyd/2013. The Tribunal had dismissed the appeal of the assessee vide order dt.06.12.2013
18.12.2014	The assessee paid an additional sum of Rs.2,00,000/- towards self assessment tax.
28.01.2015	Against the order in ITA 649/Hyd/2013, the assessee filed MA 125/Hyd/2014 wherein the Tribunal had recalled the order passed on 06.12.2013 and posted the matter for hearing.
30.09.2016	The Tribunal, after recalling its earlier dt.06.12.2013, had again issued the direction to the ld.CIT(A) to pass the order after taking into account the additional payment made by the assessee on 18.12.2014. In para 5, it was held as under : "5. Having regard to the rival contentions and the material on record, we find that under sub-section (4) of section 249 of the IT Act, an assessee is required to pay the admitted tax before filing the appeal before the CIT(A). Admittedly, the assessee has failed to comply with this condition. After filing the appeal, the assessee has sought this condition. After filing the appeal, the assessee sought adjustment of the seized cash towards the shortfall of the tax demand, but since the seized cash had already been adjusted towards the pending tax demand, the same was not adjusted, and the shortfall continued to remain. Since the assessee has paid the balance of the tax subsequently and respectfully following the decision of the Coordinate Bench in the case of T. Kishan Vs. ACIT (supra), we deem it fit and proper to remand the issue to the file of CIT(A) with a direction to verify the payment of admitted tax by the assessee; and after considering the application for condonation of delay to be filed by the assessee for the delay upto the date of payment of the total of the admitted tax, the CIT(A) shall consider the same in accordance with the law on merits and if such delay is condoned by the CIT(A), then the CIT(A) shall adjudicate the appeal of the assessee on merits. Needless to mention the assessee shall be given a fair opportunity of hearing on all the above issues."
16.03.2023	The ld.CIT(A) had dismissed the appeal of the assessee on the ground that the assessee failed to explain the delay in filing the appeal for a period of 1784 days in depositing the self-assessment tax, and therefore, the appeal was dismissed on account of the delay in filing the appeal and thereafter on merit also.

5.2. On perusal of the record, we noticed that the ld.CIT(A) has refused to condone 1784 days of delay mainly due to the shortfall of payment in self-assessment tax.

5.3 On perusal of the order passed by the ld.CIT(A) on 04.03.2011 (supra), it is abundantly clear that the ld.CIT(A) had mentioned that Rs.11,53,352/- was still pending to be paid by the assessee. Thereafter, the ld.CIT(A) had noted that the department had adjusted Rs.2 lakhs in the month of April, 2010. Thereafter, the ld.CIT(A) has mentioned that Rs.9,53,352/- was still outstanding and was required to be paid on the appeal filing date.

5.4. The assessee, after passing of the order by the ld.CIT(A) had filed the appeal before the Tribunal and the Tribunal vide order dt.20.01.2012 (supra) had remanded back the matter to the CIT(A) with direction to the assessee to file an application for condonation of delay and to verify whether as on the date of this order, assessee had paid the admitted taxes. While passing the above-said order, the Tribunal noticed that only a sum of Rs.1,99,348/- was a shortfall in payment of taxes on admitted income. Further, the Tribunal while setting aside the matter to the file of the ld.CIT(A), vide Para 8 of its order has held as under :

> *"8. We have considered the rival submissions and perused the impugned order of the Commissioner (Appeals) and other material on record. It is evident from the copy of the return of the assessee filed before us that the net tax on the income admitted in the return filed by the assessee is Rs.68,46,330/- and together with interest of Rs.9,53,346/- due thereon, the total amount of tax and interest payable by the assessee worked out to Rs.77,99,676/-. The position with regard to payment of this amount by the assessee is as follows :*

(A) Total amount due as per return – Rs.77,99,676.

(B) Amounts paid :

(a) Advance tax paid as per return – Rs.36,00,000
(b) Payment on 29.01.2010 – Rs.18,46,328
(c) Payment on 03.02.2010 - Rs.12,00,000
(d) Payment on 24.03.2010 – Rs. 9,54,000
*Total amount paid - **Rs.76,00,328***

Short fall in payment of taxes on admitted income (A-B)
(Viz. Rs.77,99,676 – 76,00,328) = Rs. 1,99,348

We find that there is a shortfall in the payment of admitted taxes by Rs.1,99,348/-. *The learned departmental representative submitted that if the assessee is able to furnish the evidence of payment of the above short-fall of Rs.1,99,348/- this Tribunal may set aside the issue to the file of ld.CIT(A), for fresh adjudication of the appeal by him on merits thereof. Considering the facts and circumstances of the present case and the decision of the Tribunal in the case of D.S. Karunakar Reddy Vs. DCIT in ITA No.402/Hyd/2011 for the assessment year 2008-09 relied upon by the learned counsel for the assessee before us, we are inclined to set aside the matter to the file of the CIT(A), to verify whether as on the date of this order, the assessee paid the admitted tax. If the assessee is found to have paid the admitted taxes aggregating to Rs.77,99,676/- the ld.CIT(A) may dispose of the appeal before him afresh, on the merits of the issues raised therein after considering the explanation of the assessee, if any for the delay in the filing of the appeal.* ***We may note at this juncture, short-fall in the payment of admitted tax is a curable defect, and till such time such defect is cured, appeal is only defective, and as soon as such defect is cured, the appeal becomes valid.*** *In this view of the matter, since the appeal filed by the assessee before the CIT(A) was not valid as on 03.02.2010 when it was filed on account of defect of non-payment of admitted taxes, and it becomes valid only when the admitted taxes on the returned income are paid. Consequently, till such time the defect is not cured, the delay in filing of the appeal by the assessee before the CIT(A) continues and the assessee has to explain the same for seeking condonation of delay, by filing necessary petition in that behalf. In case the assessee files necessary petition seeking condonation of delay, resulting on account of delayed payment of admitted taxes, consequently explaining the delayed payment of admitted taxes, the CIT(A) may consider the same appropriately, and dispose of the appeal before him afresh on merits, in case he find merit in such petition of the assessee seeking condonation of delay."*

(Emphasis supplied by us)

5.5. The conjoint reading of the order of the ld.CIT(A) dt.04.03.2011 and the Tribunal's order dt.20.01.2012 make it abundantly clear that as per the ld.CIT(A), the amount of Rs.9,53,352/- was a shortfall and was not paid by the assessee on the date of filing the appeal after adjusting the amount of Rs.2 lakhs in the month of April 2010. However, the Tribunal in its order, had mentioned that the assessee had already paid an amount of Rs.954000/- on 24.03.2010 after the filing of appeal and much prior to passing the order by the ld.CIT(A) on 04.03.2011. Thus, there was no shortfall in the deposit of admitted tax by the assessee as during the pendency of the appeal instituted on 03.02.2010, the assessee had deposited the amount of Rs.9,54,000/- on 24.03.2010. Besides that ld.CIT(A) observed in his order dt.04.03.2011 that Rs.2 lakhs were adjusted in April, 2010. The Tribunal had directed the ld.CIT(A) to decide the condonation application as there was a delay of 4 days in filing the appeal before the ld.CIT(A).

5.6. The records show that despite the above direction, the ld.CIT(A) had dismissed the appeal of the assessee vide order dt.19.02.2013, and against that, the Tribunal had also dismissed the appeal of the assessee on 06.12.2013.

5.7. The assessee after the dismissal of the appeal on 06.12.2013 had again deposited a sum of Rs.2 lakhs towards the self assessment tax as the Revenue was not accepting the contention of the assessee that the amount already lying was adjusted by the Revenue towards the self-assessment tax.

5.8. Thereafter, the Tribunal recalled its order on 06.12.2013, and thereafter, the Tribunal, vide order dt.30.09.2016, directed the ld.CIT(A) to decide the issue afresh vide its direction, which is mentioned hereinabove.

5.9. The ld.CIT(A) had again dismissed the appeal of assessee again for the reason mentioned above.

6. As mentioned hereinabove, the root cause of the dismissal of the appeal of the assessee by the ld.CIT(A) on 04.03.2011 was the non-deposit of tax liability of Rs.9,53,352/- before filing the appeal by the assessee. However, the ld.CIT(A) had failed to take note of the fact that the assessee had already paid a sum of Rs.9,54,000/- on 24.03.2010 i.e., immediately after filing the appeal. The ld.CIT(A) had ignored this important fact and dismissed the appeal of the assessee. In our opinion, gross injustice has been caused to the assessee, and thereafter, the assessee was made to suffer a lot by filing repeated appeals/applications before the Tribunal as well as before the ld.CIT(A). Had the ld.CIT(A) mentioned and took note of the amount deposited of Rs.9,54,000/-, there was no occasion to dismiss the appeal for a delay of only 4 days. The approach of the learned lower authority (Commissioner of Appeals) while passing the order on 04.03.2011, 19.02.2013 and 16.03.2013 was pedantic and contrary to law and facts. In fact, the Revenue is taking the contrary stands with respect to the adjustment of Rs.2 lakhs lying with it. In the first order dt.04.03.2011, the ld.CIT(A) mentioned that the Revenue had adjusted the amount of Rs. 2 lakhs in the month of April 2010, and thereafter, the amount of Rs.9,53,352/- was outstanding. Quite contrary to this, when the assessee had pointed out the depositing of the amount of Rs.9,54,000/- on 24.03.2010, ld.CIT(A) in order dt.19.02.2013 had changed his stand and had mentioned that it is not the

assessee who was requesting the adjustment; rather, it is the department that has adjusted the taxes towards the regular demand of Rs.55 crore.

6.1. In our view, the Revenue is not permitted to take contrary stands and the facts that have attained finality cannot be revisited by the ld.CIT(A) at the time of order giving effect to the direction of the Tribunal.

6.2. As mentioned hereinabove, the only reason pointed out by the ld.CIT(A) for not adjudicating the appeal of assessee in its order dt.04.03.2011 was non payment of Rs.953352/-. The amount of Rs.9,54,000/- was already paid by the assessee much prior to the passing of the order on 24.03.2010. Therefore, the entire approach of the ld.CIT(A) in the order dt.19.02.2013 and 16.03.2023 were without any basis. Once the assessee was able to demonstrate the payment of Rs.9,54,000/- prior to the passing of the order by the ld.CIT(A) on 04.03.2011, there was no occasion for the ld.CIT(A) to dismiss the appeal of the assessee either by the order dt.19.02.2013 and also by 16.03.2023. In view of the above, the delay in filing the appeal / non-deposit of tax is required to be condoned.

6.3. There is yet another reason to grant the relief of condoning the delay in filing the appeal / non-deposit of tax. Admittedly as recorded by the ld.CIT(A) in its order dt.04.03.2011, the amount of taxes was adjusted by the Revenue. However subsequently, the ld.CIT(A) in its order dt.19.02.2013 had mentioned that the amount of Rs.2 lakhs was not adjusted towards the self assessment tax but was adjusted towards the regular tax demand by the Assessing Officer. The assessee with a view to mitigate his hardship and with a view to have the adjudication of appeal on merit, had deposited the amount of Rs.

2 lakhs on 18.12.2014. In our considered opinion once the Revenue itself had adjusted the amount towards the self assessment tax as recorded by the ld.CIT(A), no request letter is required to be given by the assessee. However, the above said issue of adjustment of the cash lying with the Assessing Officer is no more res integra as the Tribunal in the following cases had decided the issue in favour of the assessee. We are reproducing hereinbelow the ratio in the case of Arun Bansal Vs. ACIT vide ITA No.2615/Del/2022 dt.29.05.2023 in paras 6 and 7 had held as under :

> *"We have considered rival submissions and perused material son record. In so far as the factual aspect of the issue is concerned, there is no dispute that at the time of search and seizure operation conducted in the case of a third party, a locker standing in the name of the assessee was found, wherein cash amounting to Rs,1,07,00,000/- was found and seized. At the time of search and seizure operation itself, the assessee has declared the cash found as income. However, in the return of income, the assessee could not offer the amount as income, as the assessee did not have the liquidity to discharge the tax liability and the system of the department was not accepting the return of income without payment of self assessment tax. Even in course of assessment proceedings, the assessee had communicated to the Assessing Officer offering the amount of cash found in the locker as income and had requested the Assessing Officer to adjust the tax liability from the cash seized. However, as appears from the copy of Form-26AS furnished before us at the time of hearing, the tax due was adjusted from the cash seized only on 09.07.2021.*
>
> *7. Undisputedly, the cash seized was in the possession of the department from the date of search itself i.e., 01.12.2018. It is a fact that the assessee has also requested the Assessing Officer to adjust the self assessment tax liability on the income declared of Rs.1,07,00,000/- from the seized amount. However, assessee's request was never accepted. On a reading of section 132B of the Act, though it transpires that the assets seized can be adjusted against any existing liability under the Act and advance tax may not be an existing liability, however, in our view, self assessment tax is certainly an existing liability, created on 1st April once the financial year ends. Therefore, the Assessing Officer should have adjusted the tax liability relating to the undisclosed income declared by the assessee by way of self assessment tax on 1st April, 2019. In that eventuality, there could not have been levy of interest u/s 234B of the Act, as interest u/s 234B of the Act has to be computed from first day of April following the financial year, for which, advance tax was required to be paid. At this stage, we must observe, in a dispute of identical nature arising in case of assessee's brother, the Tribunal while deciding the issue in ITA No.300 & 2748/Del/2022 dt.11.01.2023 has deleted the levy of penalty u/s 234B of the Act by observing that the cash seized*

should have been adjusted against the self assessment tax payable with the return of income. Thus, considering the totality of facts and circumstances of the case, we hold that interest charged u/s 234B of the Act in the peculiar facts and circumstances of the present case, deserves to be deleted. We, accordingly, delete the addition."

6.4. In view of the above, we are of the opinion that the assessee was able to prove his case that the admitted tax liability was already paid by the assessee / adjusted by the Revenue and therefore, the appeal of the assessee was maintainable.

6.5 Further, the Revenue vide letter dt.29.09.2023 has mentioned as under :

Office of the Asst. Commissioner of Income Tax, Circle-6(1),
Room No. 625, 6th Floor, 'B' Block, I.T. Towers, A.C. Guards, Hyderabad
Ph: (040) 23425427; Email : hyderabad.dcit6. 1@incometa.x.gov.in

No. ACtT/Cir.6(1)/AAFFD9401 PIA.Y. 2008-09 Date: 29.09.2023

To

The Commissioner of Income Tax (DR)-1,
ITAT, A- Bench,
Hyderabad.

Madam,

Sub: Appellate Proceedings in case of M/s Demi Realtors (MFFD9401P) for A.Y. 2008-09 .ITA No. *1561H12023* .Forwarding of formation Reg.

Ref: CIT(DR)-1, Hyd. office letter in CIT(DR)-IIITN156IHI23I2023-24 dated 26.09.2023.

Kindly refer to the above. As seen from the order of the Hon'ble ITAT dated 06.12.2013 in ITA No. 6491HYD12013, the assessee had submitted that, during the course of search and seizure operations, a locker key pertaining to a locker located at Axis Bank, SR Nagar branch Hyd. was found at the business premises of M/s Pink Estates Pvt. Ltd., Hyderabad. Subsequently, as per the copy of the letter addressed by M/s Pink Estates Pvt. Ltd. to the DCII, Central Circle-6, Hyd. on 17.02.2010, it is stated that the said locker is said to be of Sri D.S. Karunakar Reddy, a partner in M/s Demi Realtors, from which an amount of Rs. 2,00,000 was seized. In this letter, the company had given a no objection for adjustment of the seized cash of Rs. 2.00,000 against the demand relating to M/s Demi Realtors. Accordingly, the same was adjusted on 05.04.2010 under the Minor Head 400 i.e. towards Regular Tax since the assessment order was passed on 29.12.2009. A copy of the letter of the company along with the screen shot of the payments made by the assessee till date as per OLTAS is enclosed herewith for reference.

With regards to the provisions in the Income Tax Act relating to adjustment of seized cash towards taxes, the same is provided in Sec. 132B(1)(i) of the I.T. Act as well the Explanation 2 to Sec. 1328 of the I.T. Act. Explanation 2 was inserted by Finance Act, 2013 w.e.f. 01.06.2013. Subsequently, CBDT has issued Circular No. 20/2017 dated 12.06.2017 as per which it has been settled that Explanation 2 to Sec. 132B shall have a prospective application. A copy of the same is attached herewith for reference. The record in 2 Vols. Is forwarded herewith.

Yours faithfully,

End: as above

Sd/-

(T.MURALIDHAR)
Asst. Commissioner of Income Tax,
Circle-6(1), Hyderabad.

Copy submitted to the Addl. CIT, Range-6, Hyd. for information."

6.6. The Revenue in their written submissions has mentioned that the decisions cited by the assessee are distinguishable. The Revenue has filed the following submissions in this regard. Dt.06.11.2023.

"1. ACIT Vs Narender N. Thacker:- ITAT, KOLKATA "B" BENCH IT(SS)A No. 01/Kol/2012.

FACTS: Assessee while filing return in response to notice u/s 153A requested for adjustment of seized cash towards self assessment tax (SAT) payable by assessee. A.O. adjusted seized cash towards tax liability determined to be payable pursuant to 153A assessment.

Held that action of A.O. in adjusting seized cash towards tax liability determined on completion of search assessment is in order.

Demi Realtors:- The case law cited by AR is in favour of Revenue's case wherein the AO has also adjusted seized cash towards regular demand. The assessee has not requested for adjustment of seized cash towards Self Assessment Tax in case of Demi Realtors.

2. ACIT Vs Sri Salt an Singh :- ITAT DELHI BENCH "B" NEW DELHI IN ITA No.6640/DEL/2016.

FACTS: Assessee disclosed seized cash as undisclosed income u/s 132(4) in ROT filed u/s 153A, Assessee claims credit out of seized cash as SAT paid asking for credit of seized cash. ROT was accepted and credit was also given for taxes by A.O. A.O. by way of 154 held that credit for SAT was wrongly given, since amount was still lying in PD a/c.

Held that credit of seized cash towards SAT was rightly made by A.O. as requested by assessee.

Demi Realtors:- The assessee has not requested for adjustment of seized cash towards Self Assessment Tax and not claimed in the ROT filed by the assessee.

1. *Arun Bansal Vs ACIT,:- ITAT DELHI BENCH "B" NEW DELHI IN ITA No.2615/DEL/2022.*

FACTS: Assessee offered the cash seized from locker as income but did not file in the ROT filed in response to Sec 153A since SAT was not paid. Assessee requested AO to adjust SAT liability from seized amount.

Held that Assessing Officer should have adjusted the tax liability relating to disclosed income declared by the assessee by way of SAT.

Demi Realtors : In this case cash seized from the locker was requested by the assessee to be adjusted towards regular tax after completion of assessment u/s 153A.

2. *Esha Bhattacharjee Vs. Raghunatpur Nafar Academy 12 SCC 649, 2013*

Facts – This case law is related to principles laid down as per Article 226 & 136 of constitution in respect of condonation of delay in filing of appeal.

Demi Realtors : This is not applicable to the facts of the case.

3. *Western Union Financial Services Inc : - SC Civil Appeal No.4274 of 2023.*

Facts – Original appeals filed in time and delay considered in the respective appeals after removing the defects.

Demi Realtors : delay of 1784 days form the date of removing defect viz. payment of self assessment tax.

4. *D.S. Karunakar Reddy vs. Addl.CIT, Hyderabad : ITAT Bench A Hyderabad ITA No.4/Hyd/2016.*

Facts : The Hon'ble ITAT has set aside the appeal to the ld.CIT(A) as the assessee has paid admitted taxes and to condone the delay for filing of appeal.

5. CIT Vs. Manojkumar Beriwal : - Dt.26.06.2008 High Court of Bombay ITA No.85 of 2008:

Facts : Hon'ble High Court opined that Tax does not include interest for the purposes of 249(4) of the Act.

Demi Realtors : Not relevant to facts of instant case.

CONDONATION OF DELAY:

Assessee filed affidavit seeking condonation of delay of 1784 days as not willful and in lieu of precarious financial liquidity, the appeal could not be filed in time. No further evidence on account of financial hardships faced by the assessee were submitted during the course of appeal proceedings. The assessee has also failed to explain in detail the extraordinary delay of 1784 days and as such the delay is not convincing and the application of condonation of delay should be dismissed.

CASE LAWS RELIED BY THE REVENUE

1.CIT Vs Arvinder Singh 79 Tax man 332 (Delhi)

- Where there was extraordinary delay of 1271 days in filing appeal and reason for such delay was not convincing, appeal for condonation of delay and appeal to be dismissed.

2. Ajmeer Sharaff & Co., Vs ITO 61 Taxman 301 (Mad)

- Condonation of delay of 754 days rejected. Each day delay needs to be explained.

3. Varna Apparels (I) Pvt Ltd Vs ACIT 102 Taxman 398, 2019 (Born)

- Condonation petition for 507 days delay rejected."

6.7 We have considered the written submissions and the letter dt.29.09.2023 filed by the Revenue. On perusal of the letter dt.17.02.2010 which was referred in letter dt.29.09.2023, it was mentioned as under :

> *"The above amount relates to M/s. Demi Realtors only and we have no objection to adjust the same from the demand relating to them."*

6.8. In our considered opinion once the request has been received for adjustment of the amount towards the demand of the assessee before us, the Assessing Officer was duty bound to adjust the amount initially towards the self assessment tax / advance tax and thereafter to adjust the regular tax demands.

The self assessment tax / advance tax precedes the regular tax demand. The self assessment tax is due and payable at the time of filing of the return of income / before filing of the return of income. Whereas, the assessed tax demand is payable by the assessee after the assessment order has been passed. In the present case, the search took place on the premises on 17.10.2007 and the assessee filed return of income on 07.07.2009 for A.Y. 2008-09 and thereafter, the assessment order was passed on 29.12.2009. Admittedly, the seized amount was lying with the Revenue, after it was found during the course of search i.e., 17.10.2007 and therefore, in our view, it was required to be first adjusted towards the self assessment tax demand and thereafter, if there was any surplus, then the amount was to be adjusted towards the regular assessment tax demand. We do not find any reason to adjust towards the regular tax demand instead of self assessment tax except to oust the assessee from filing the appeal before the 1st appellate authority. In both the circumstances, the amount was going into the account of the Revenue on behalf of the assessee only.

6.9. Further, we found that the assessee had financial hardship in depositing the amount as claimed by the Revenue, which is duly supported by the statement of bank accounts and other financials enclosed with the application for condonation of delay.

6.10. In our considered opinion, the present case is a perfect text book case, as to how the Revenue has adopted an adversarial approach to deny the rights to the assessee. It has not only denied the rights to the assessee to file the statutory appeal but had also eroded the trust of the assessee by forcing it to undergo for a protracted litigation.

6.11 Further, we noticed that the assessee had also explained reasons for the impugned delay due to financial hardships. We rely on the Gujarat High Court's recent judgement in the case of Nandlal Namdev Otwani Vs. Vijay Jayprakash Ahuja(1) wherein it has been held that if a party is able to show bonafide financial difficulty to challenge an impugned order, it can be considered as one of the grounds for condonation of delay in filing of appeal. The Hon'ble Supreme Court recently in the case of Western Union Financial Services vide judgment dt.07.07.2023 in Civil Appeal No.4274 of 2023 had condoned the delay in filing the appeals for a period of 1110, 1117 and 991 days, respectively.

7. Respectfully following the said case laws and due to the reasons and circumstances explained by the Managing Partner of the assessee firm, in his affidavits filed along with condonation petition, we condone the delay of 1784 days in filing the appeal and thus admit the appeal for hearing. Accordingly, ground nos.2 and 3 are allowed.

7.1. Case is now taken up for adjudication on merits.

8. The brief facts of the case are that assessee is a firm engaged in the business of Real Estate and that on 17.10.2007 a search and seizure operation under Section 132 of the I.T. Act, 1961 was conducted at the business premises of the assessee. The assessee filed its return of income for the assessment year 2008-09 on 07.07.2009 declaring an income of Rs.2,01,42,190/-. Thereafter, notice u/s. 143(2) was issued and served on the appellant firm. Subsequently, Assessing Officer [completed the assessment u/s 143(3) dated 29.12.2009 determining the total income of the assessee at Rs. 125,74,44,435/- by making various additions and thereby assessed the total income of the assessee at Rs.125,74,335/-.

8.1. During the course of assessment proceedings, the Assessing Officer noticed that one Mali Forex Limited ("hereinafter called as "MFL") Hyderabad entered into an MOU on 23.02.2007 with DLF Commercial Developers Limited, Hyderabad ("hereinafter called as "DLF") As per the MOU, Mali Forex Ltd has to purchase the lands in Sy.Nos.262 to 270, 226 & 227, 218, 219, 222 to 225 situated at Puppalaguda Village, Narsinghi Village, Rajendra Mandal, R.R. District and sell the same to DLF. Assessee firm was formed to facilitate the purchase of the lands and sale of the same to DLF by MFL. The partners of the assessee firm (M/s. Demi Realtors) are dummy persons and they do not have any capital contribution and capacity to do the above business. One of the partners of the assessee firm namely, Sri A. Harnath Reddy admitted in his statement recorded on 10.12.2009 that he is only a dummy person and that he does not know from whom the lands were purchased and to whom the lands were sold by the firm.

8.2. MFL along with assessee firm entered another MOU on 19.06.2007 with DLF for sale of above mentioned lands. As per clause (3) of this MOU, the payment for sale of lands are payable to MFL or assessee firm, who is treated as one party namely, First Party and the DLF was treated as second party. While so, all the major land owners relinquished their ownership rights in favour of assessee firm before Lok Adalat vide order in O.S.No.481/2007 dt.22.08.2007. Thus, assessee firm became the legal owners of the lands and subsequently, it sold the lands to DLF.

8.3. Assessing Officer further noticed that assessee firm has not credited the gross sale receipts to the Proft and Loss account, received from DLF, which were paid directly to the landlords or other nominated persons on behalf of the firm. Similarly, assessee firm has not debited the payments made by the DLF to the landlords and other nominated persons on behalf of it, only to avoid the disallowance u/s 40(a)(ia) and 40A(3) of the Act. The Assessing Officer observed that payments were made directly by the DLF to the various brokers on behalf of the assessee, as per its instructions itself.

8.4. During the course of enquiry, assessee firm has not produced any evidence to show that cash payments were covered under any of the exceptions provided u/s 40A(3) of the Act. Hence, the Assessing Officer disallowed the cash payments of Rs.24,94,00,000/- made to various persons such as brokers and also landlords. Assessing Officer also disallowed an amount of Rs.21,08,45,001/- as the assessee firm has not deducted any TDS though it has made payments to various parties other than landlords / claimants partly through its account and partly directly from DLF. Similarly, Assessing Officer made various disallowance / additions listed at page 21 of the assessment order and completed the assessment u/s 143(3) of the Act on 29.12.2009.

9. Feeling aggrieved with the assessment order dt.29.12.2009, assessee filed appeal before the ld.CIT(A), who vide order dt.04.03.2011 dismissed the same in limini for non-payment of admitted taxes u/s 249 of the Act and also for delay of 4 days in filing the appeal. Thereafter, assessee preferred appeal before the Tribunal and the Tribunal vide its order dt.20.01.2012 (ITA No.334/Hyd/2011 dt.20.01.2012) has set

aside the matter to the file of ld.CIT(A) to verify whether as on the date of the order of Tribunal i.e., 20.01.2012, the assessee paid the admitted tax and if it is found to have paid the admitted tax aggregating to Rs.77,99,676/-, ld.CIT(A) may dispose of the same afresh, on the merits of the issues raised therein, after considering the explanation of the assessee, if any, for the delay in the filing of the appeal.

10. Consequent to set aside by the Tribunal, in the second round of appeal, ld.CIT(A) dismissed the appeal of assessee vide its order dt.19.02.2013, holding that the appeal was not legally valid and cannot be admitted both on account of non-payment of tax u/s 249 of the Act as well as on account of continuing delay of 66 days in filing the appeal. Again, the assessee approached the Tribunal and the Tribunal vide its order dt.06.12.2013 (ITA No.649/Hyd/2013) again dismissed the appeal of assessee holding that the assessee had not complied with the directions of the Tribunal given in earlier occasion and that the grounds raised by the assessee have no merit. Thereafter, assessee filed MA No.125/Hyd/2014 in ITA No.649/Hyd/2013 submitting that there are apparent errors in the order. The Tribunal recalled its order on 28.01.2015 and the assessee, pending disposal of the M.A. paid Rs.2,00,000/- on 18.12.2014 vide self assessment tax. Thereafter, the Tribunal heard the appeal and allowed the appeal of assessee by remanding back the matter to the file of ld.CIT(A) with some directions (which were reproduced at page 58 of the order of ld.CIT(A) dt.16.03.2023).

11. In the third round, before the ld.CIT(A), assessee sought for condonation of delay of 1784 days caused due to two rounds of litigation from 30.01.2010 till 18.12.2014. After an elaborate discussion from Page 58 to 90 of his order, Ld.CIT(A), dismissed the appeal of assessee on account of non-condonation of delay as well as on merits.

12. Aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

13. The assessee has raised as many as 16 grounds. Out of them, ground 1 is general in nature and requires no separate adjudication, ground nos. 2 and 3 are with respect to delay, which are already allowed by us by condoning the delay. and the remaining ground nos.4 to 16 for discussion can be summarized as follows:

1) Ground 4: Disallowance of Rs.24,94,00,000 under section 40A(3) of the Act.
2) Grounds 5 to 7: Disallowance of Rs.21,08,45,001 under section 40(a)(ia) of the Act.
3) Grounds 8 and 9: Payments made to parties amounting to Rs.4.8 crores without TDS deduction.
4) Ground 10: Disallowance of Rs.2,77,09,907 made for purportedly bogus development expenditure.
5) Ground 11: Disallowance of Rs.8,41,87,239 under section 40(a)(ia) of the Act.
6) Ground 12: Addition of Rs.18,47,25,000 due to non-production of confirmations.
7) Ground 13: Addition of 13.81 crores as unrecorded cash payments.
8) Ground 14: Payment made to Mirza Iqbal Ahmed and others.
9) Grounds 15 and 16: Disallowance of land cost amounting to Rs.45,90,60,000 debited under section 40(a)(ia) of the Act.

All the grounds pertain to 9 distinct issues that we will individually address below.

13.1. In support of its case, ld. DR filed written submissions. We are reproducing the written submissions filed by the assessee and revenue which deal with individual grounds.

14. **GROUND – 4**

Ground No. 4 is with respect to **Disallowance of Rs.24,94,00,000/- under section 40A(3)** of the Act. With respect to this, ld. AR has drawn our attention to pages 4 and 5 of the assessment order, which reads as under :

> *"**Disallowance u/s 40A(3)***
>
> *It is noticed that the assessee firm paid cash to the various brokers and also to the landlords for purchase of lands during the year under consideration and the same is debited to the P & L account. The details of the parties are as under :*
>
> **left table intentionally.*
>
> *These parties are having bank accounts. The assessee firm paid partly in cash and partly in cheques to the above parties. The total amount of cash paid to land lords comes to Rs.17,73,00,000/- and total amount paid to the Agents come to Rs.7,21,00,000/- In this connection, the assessee was requested vide this office notice U/s.142(1) dated 1911-2009 why the above cash payments should not be disallowed U/s.40A(3). The A.R of the assessee in his letter dated 26-11-2009 has submitted that the assessee acted as an agent on behalf of DLF. He further stated that the assessee held the properties only through an agreement of sale cum irrevocable .power of attorney but did not become the owner of the property. He also stated that there are number of disputes with regard to said lands and therefore payments are made in cash.*
>
> *The submissions of the assessee - are considered and the. same are not acceptable for the following reasons:*
>
> *(i) There is absolutely no merit in the argument of the assessee that it was acting on behalf of DLF in making payments to the Land lords and therefore the provisions of Sec. 40A(3) are not applicable. All the Land Lords and claimants relinquished their rights in favour of the assessee as per the Lok Adalat Order O.S.No.481/2007 dated 22-08-2007. The assessee purchased the lands through an agreement of sale cum irrevocable, power of attorney from various landlords and part of the lands are sold to DLF and balance lands to others. Registration of lands in its name is not the criteria to become owner of these Lands.*

Therefore, it is submitted that it was not an agent on behalf of DLF. The MOU entered by the assessee with DLF clearly mentions that the DLF will purchase the lands from the assessee @ Rs. 12.50 crores per acre and the payments will be made either to the assessee or its nominees.

(ii) It is submitted that the assessee firm is engaged in purchase and it is not a capital asset to the assessee. The Land purchased is a trading asset. The land purchase cost is debited to the P.&L account. Therefore, 40A(3) provisions are applicable to the purchase of land and also to the payments made to various brokers and landlords.

(iii) The assessee firm made part of the payment in cash and part of the payments in cheques to the above parties. All the parties are having bank accounts.

(iv) The assessee has not produced any evidence to show that the above cash payments are covered under any of the exceptions provided U/s.40A(3).

Considering the above reasons the total cash payments of Rs.24,94,00,000/- are disallowed U/s.40A(3) and is added to the total income of the assessee.

14.1 On appeal, the ld.CIT(A) had decided the issue at pages 70 to 74 of the order wherein he observed as under :

"The claim of the appellant that the payments have been made by the M/s. DLF group is false and completely unsubstantiated and no confirmation with- regard to the same has been filed. The appellant- claims that it was an agent and an aggregator and therefore the payment is not attributable to it is completely a self-serving story as the section is very clear and the appellant has incurred the expenditure and the appellant has made the payment to the various parties and persons. The appellant has, to circumvent, not accounted for the same and has also not brought out any evidence from M/s.DLF that they have accounted for such transactions in their books as cash payments. The MoU cannot overwrite the provisions of law which have been laid down by the Parliament.

The AO has observed that the cash payments and cheque payments to various parties have been made in part and all these parties are having bank accounts by default as the cheque payments have been made. The appellant has accounted for payments to various landlords and also the agents. The appellant has not brought out any basis for the payment of cash and also it is important to note that these payments do not find any explicit mention in the agreements also. There is no merit in the argument of the appellant that it was acting merely as an agent and, therefore, has been absolved to account for entries of purchase and sale made through it. The appellant has also not brought out anything on record to state that M/s. DLF group has accounted for these entries as theirs. The above being a self-serving argument by the appellant and the factum that the land has been relinquished in its favour on account of these payments

make the appellant the de facto owner and the registration is merely a process and not the only basis to hold the appellant as an owner. The non-registration of a document does not absolve an entity to record transactions as per law.

The appellant in the submissions filed, has mentioned that the payments were made to the said persons and the same were registered in the favour of M/s.DLF group concerns. The above argument is primarily wrong as per the admission before the Lok Adalat already highlighted by the AO and no proof of subsequent registration has been, submitted as such. In spite of the above, it is seen that the appellant has made these payments and DLF has made payment to the appellant. It is a two tier transaction and the DLF entity has paid the appellant in cheque and not in cash. The appellant chose to withdraw the amount from the bank and has made the payment in cash. The DLF entity has not made any payments in cash and the appellant's whole exercise to attribute these cash payments to DLF is a self-serving argument and no proof of admission by DLF entity that they have accounted as cash payments to these parties have been brought on record.

There is an agreement between the DLF entity and the appellant. The appellant was required to make the payment but nowhere is it stated that the appellant is not supposed to follow the provisions of the Act or the payments have been made directly by the DLF entity. In view of the same, the argument of the appellant is rejected.

Further, the appellant has stated that the above is a capital expenditure with itself is a farcical argument and cannot be deliberated upon. The appellant has bought the same as trading stock and has sold the same to the DLF entity and these are not capital investments in any manner and as per the terms of the agreement, therefore, this claim of the appellant is rejected. The appellant further stated that it facilitated as an aggregator. It is seen that the payments and receipts are part of the appellant's bank account and, therefore, the same are to be governed for allowance as per Income tax provisions for determination of income. Further, there is no law which allows aggregator to make such mode of payments in cash or without TDS as an entity. There is no confirmation by DLF in this regard to make such payments on their behalf and the same has to be accounted in that manner in their books nor any exception with regard to Section 40A(3) has been brought out.

It is further stated that the amounts were paid late in the night on 22.08.2007, the need of the same nor the date of such payment has been substantiated especially when part payments have been made by cheques to these parties itself and the high value banking transactions are cleared on the same day. Therefore, this is just a self-serving theory, there was no natural calamity or a deadline which was approaching. These are completely non-adherence of provisions and also other laws and circumventing of the laid down procedure and the manner of transactions. These are all afterthoughts without any bonafide and the same is, therefore, rejected accordingly. To sum up, the AO has further brought out that the payments made to these

> *parties are not covered under exceptions U/s 40A(3) and neither the appellant has brought out any justification in the submissions in the record of 40A(3) at any point in time. Thus, the appellant in its silence also agrees to the above proposition and therefore, the addition made by the AO u/s 40A(3), Rs.24,94,00,000/- is hereby confirmed. Accordingly, the ground no. 2 is dismissed.*

14.2. Before us, ld. AR has submitted that the assessee acted as an agent and was holding the rights made over to it by virtue of Lok Adalat Order in O.S.No.481/2007 dt.22.08.2007 dt.22.08.2007. He further submitted that assessee has not accounted for transactions which are neither its income or expenditure. Ld. AR further submitted that ld.CIT(A) did not appreciate the compromise petition and various other agreements entered into (Page 36 to 52 and 88 to 90 of the paper book) and that all the payments were made by DLF directly.

14.3. The ld. AR further submitted that the land of Ac.14.02 gts in respect of which payments were made by DLF and assessee was registered in favour of DLF Group concerns (Page 93 to 118). Ld. AR further submitted that DLF is the ultimate beneficiary and not the assessee as the DLF requested the assessee to resolve the disputes and transfer the said land to it or its group concerns and in that process only, some payments were made by the DLF to assessee to settle the disputes. Assessee has no intention to trade in the land as it is only a land aggregator and not the beneficiary.

14.4. The ld. AR also filed written submissions in support of his case. The relevant portion of the written submissions pertaining to this issue reads as under :

> *"It is submitted that the findings of the AO as well as the ld. CIT(A) are incorrect. It is submitted that the Appellant acted as an agent. The following terms in the MOU would establish the intention of the parties and also the fact that the Appellant is an 'aggregator of land for DLF', and had acted an 'agent' on behalf*

of DLF which is the ultimate beneficiary to which the lands were transferred:

06-06-2007 - An MOU (pages No.36 to 51 of PB – VOL-1) was entered into between by about 40 land owners and claimants of Pappulaguda village with the appellant herein and DLF Commercial Developers Ltd. According to this MOU, land to an extent of Ac 14.02gts out of total extent of land of Ac 51.29gts of land of Puppalaguda village in Survey Nos.263 to 270 is proposed to be transferred. Based on this agreement, an amount of Rs.10,60,00,000 was paid through cheques (page No.52 of PB – VOL-1) to the parties concerned. All the cheques were issued by DLF. The balance consideration of Rs.44.01 crores would be paid upon execution of the registered sale deeds. The amounts paid are as per the list annexed and all the amounts have been paid by DLF directly.

19.06.2007 An MOU (Pg. 1 to 35 of PB- VOL-1) is entered into by Mali Florex Ltd. & Appellant as first part and DLF on the other hand. The requirement of land for DLF to set up Integrated IT Park, and the consideration agreed to be paid, are captured in this agreement. Few of the important terms to the extent relevant are only extracted hereunder for ready reference for the sake of brevity:

B. The First Party has approached the Second Party with a proposal by which the First Party have together agreed to procure for and on behalf of the Second Party, the Scheduled Land (as defined below), from the Land owners subject to the term and conditions of this Agreement D. The Parties have reached a mutual understanding that the Scheduled Land in a consolidated and composite block of approximately Twenty Six (26) acres subject to actual measurements can be utilized by the Second Party for the Projects and based on the understanding arrived at amongst the parties, the First Party shall arrange and ensure that all the Landowners shall enter into Sale Deeds directly with the Second Party and shall ensure the execution and registration of Sale Deeds in respect of the Scheduled Land in favour of the Second Party directly from all the Landowners.

F. Out of the schedule land M/s. Demi realtors entered into an agreement with the land owners in respect of land to an extent of Ac. 14-00 gts (should have been Ac 14.02gts) in Sy No's 263 to 270 of Puppalguda Village, Rajendranagar Mandal, Ranga Reddy District and (Ac 5.06gts in) Sy. No's 218,219 & 225 situated in Narsinghi Village, Rajendranagar Mandal, R. R. District which is more fully detailed in Part "A" of Schedule2. Similarly Mali Florex has entered into an agreement with land owners in relation to an extent of Ac.10-19 gts (Should have been Ac 6.32gts) in Sy Nos. 217,220-224, 226 & 227 of Narsinghi Village, Rajendranagar Mandal, Ranga Reddy District which land is more fully detailed in Part"B" of schedule2. Both the properties together constitute the schedule property and are referred to as such in these presents.

2.6 The First Party has assured the Second Party that it shall cause the sale of the entire Scheduled Land in favour of the Second Party. Without Prejudice to the First Party's obligation to do so, the second Party shall have the right (but not the obligation) to waive such requirement and proceed on the basis of any acquisition of the Scheduled Land such waiver may be subject to conditions prescribed by the Second Party.

3.1.1 On the Signature Date the Second Party hereby agrees to pay to the First Party or its nominees demand drafts drawn for total amount equal to INR.32,50,00,000/- (Thirty Two Crores Fifty Lakhs Only) being approximately 10% of the purchase price, the receipt of which will be confirmed by the parties for the First Party.

3.1.2 On depositing Original Title Deed documents in respect of the different Extents as per Schedule 2 with the Escrow Agent by the First Party the Second Party had agreed to release INR 32,50,00,000/- (Thirty Two Crores Fifty Lakhs Only) being approximately 10% of the purchase price to the First Party or its nominees as the case may be.

3.2 Subject to the representations, Warranties, covenants and obligations of the First Party set out in this MoU and the satisfactory completion of the Due Diligence and resolution of all issued to the satisfaction of the Second party, the Second Party, the Second Party shall pay to the First party and Landowners of their GPA's an amount of INR. 12,50,00,000 (Rupees Twelve Crores Fifty Lakhs) per acre aggregating to INR. 325,00,00,000 (Rupees Three Hundred and Twenty Five Crores) for the Scheduled and ("Purchase Price"). It is agreed between the Parties that the Purchase Price shall be apportioned between the Land owners or their GPA's and the First Party in the manner and proportion to be mutually decided between the Landowners and the First Party and this shall constitute adequate consideration for the First Party for discharging its obligations towards the second Party under this MoU.

30-06-2007 - One Sri Muthyam Reddy and his three sons staked their claim against the above stated Ac 51.29 Gts of land by virtue of sale deed dated 06.07.1974 entered into with children of Mohd. Aleemuddin in respect of 25 acres of land. Deed of confirmation dated 24.04.1985 confirming further purchase of Ac 6.10 gts of land in the year 1975. The above parties also acquired possession of further extent of land to an extent of 19 acres by virtue of mortgage created in their favour by Mohd Jamaluddin, Mohd. Khairuddin, Mohd Azeemuddin and Mohd Kareemuddin. All the above are referred to in this agreement at pg.54 of PB-VOL-1.

After verification of their claim, an MOU was entered into on 30-06-2007 (page No.53 to 64 of PB – VOL-1) with them by the appellant herein and DLF. According to the MOU, Sri Muthyam Reddy and others on transfer of Ac 14.02 gts of land with all rights to DLF would be entitled to receive an amount of Rs.22.50 crores besides getting land of 10 acres 20 guntas in Survey Nos.271 to 273 out of the said Ac 51.29 gts of land, in their favour. An advance of Rs.2 crore was paid by DLF to Sri Muthyam Reddy and others.

32. The terms of the MOUs referred to above and the conduct of the parties later on in the course of entering into contracts would evidence and establish the fact that Appellant is only an aggregator of land. The Appellant never had the capital to buy the lands from the land owners, and then, in turn, sell it to DLF or its group concerns. Therefore, the lands dealt were not trading assets of the Appellant so as to treat the land purchase as 'expenditure' and land sale as 'income'. The obligation of the Appellant under the MOUs was to bring in all the land owners and litigating claimants of the lands which the DLF desired to purchase to a discussion table and ensure that all the litigations are settled, before the lands in question were transferred to the DLF Group.

33. It is submitted that all the adverse findings of the AO & CIT(A) against the Appellant are incorrect and are unsustainable on facts and in law. All the allegations/grounds on which the disallowance under section 40A(3) of Rs.24,94,00,000 is made by the AO, and sustained by the CIT(A) cannot be sustained because of following reasons.

It can be seen from the terms of MOUs extracted above, the Appellant is an aggregator and all actions carried on by the Appellant were at the behest of DLF. The allegation that Appellant had become owner of lands on relinquishment of rights by the landlords and claimants by virtue of LOKADALAT order in OS.No.481/2007 dated 22.08.2007 is factually and legally incorrect. It is submitted that as per the obligations cast on the Appellant to aggregate lands as per the MOUs which are discussed hereunder, the Appellant took efforts and made the landowners and claimants to agree to the terms of compromise petition.

FIRST MOU dated 06.06.2007 was entered into by the 06.06.2007 entered into first MOU (pgs.36 to 51 of PB- Vol-1) with Mohd.Gayasuddin & other legal heirs (All are legal heirs to Mohd. Aleemuddin – original owner of land measuring 51 acres) had agreed to purchase the land to an extent of 14.02 acres for a consideration of Rs.54,61,00,000. DLF paid Rs.10,60,00,000 (Pg.42 of PB- Vol-1) as advance and agreed to pay the balance consideration therein of Rs.44,01,00,000 (pg.43 of PB – Vol-1) at the time of registration. As per the above MOU, it was the duty of Appellant (pg.44 of PB- Vol-1) to ensure that the parties therein shall execute the sale deed in favour of the DLF as per the MOU.

The MOU (at pg.51 of PB- Vol -1) contains the details of litigation pending as on the date of MOU.

SECOND MOU dated 30.06.2007 (pgs. 53 to 64 of PB- Vol-1) was entered into by the DLF with family members of K.Muthyam Reddy in respect of the very same land of 14.02 acres for a consideration of Rs.22.50 crores. An advance of Rs.2 crores was paid by DLF directly to the family members of Mr.K.Muthyam Reddy (clause 2.10 @ pg. 58 of PB- Vol-1). The balance consideration of Rs.20.50 crores was to be paid upon execution of sale deed (clause 4.2 @ pg.59 of PB – Vol-1).

- *The Appellant as per the terms of the above MOUs made efforts and brought all the litigating parties to the table, and arrived at a settlement. The compromise terms were arrived at, which was made part of LOKADALAT order dated 22.08.2007. Para 11 of the compromise petition (Pg.87 of PB- Vol-1) reflects the role played by the Appellant. The Clause 5 deals of compromise terms deals with the extnt of land; clause 7 deals with the advance amounts paid to defendants 1-7 (as per MOU dated 06.06.2007) of Rs.11,84,50,000 and Rs.2,50,00,000 to Defendant No.22 (as per MOU dt.30.06.2007). The above payments were made by DLF as per terms of MOUs entered into with respective parties with an intention to acquire the land of 14.02 acres. Certainly, the payment was not made by the Appellant.*

- *The compromise petition further records balance payment of Rs.118,77,83,330 to the plaintiff and Respondents 1 to 32 by Appellant (def.no.33) and also records the details of the demand drafts by which the above amount is being paid. It is important to notice that all the demand drafts referred to in the compromise petition are drawn by DLF at CITIBANK, N.A. Gurgoan (pg.90 of PB- Vol-1).*

- *By virtue of compromise petition and LOKADALAT order dated 22.08.2007 all the parties as per clause 7 (pg.88 of PB – Vol-1) agreed to execute document relinquishing all their rights, title, claims and interest over the suit schedule property in favour of defendant no.33 (the appellant herein) or its nominees by executing or joining in any registered conveyance/sale deeds on payment of agreed consideration by the defendant no.33. Accordingly, the balance consideration of Rs.118,77,83,330 was paid to the parties therein by DLF by way of demand drafts.*

- *It is submitted that till this stage, it was only an agreement to relinquish all their rights, title, claims and interest over the suit schedule property in favour of defendant no.33 therein. It is interesting to note that every penny of advance payment and the amount paid as per compromise terms as per LOKADALAT order came from DLF. The landlords, claimants and others as mentioned in the compromise petition filed before LOKADALAT have never transferred their rights in respect of land of Ac.14.02gts. So far as Appellant is concerned, it remained as a right, to be passed on to DLF or its concerns as per the terms of MOUs.*

On the same day, i.e., 22.08.2007, a sale deed (pgs. 93 to 118) was entered into by the parties to the compromise petition (and their family persons who can probably claim some right in the land in question) and as well as other litigants (who have not initiated litigation by then) DIRECTLY in favour of DLF Group companies (1. Grandbay Estate Developers Ltd. and 2. Venezia Estate Developers Limited) for a total consideration of Rs.175,62,50,000. The sale deed records advance considerations paid to land owners, claimants by virtue of MOUs as well as by way of compromise petition (pgs.101 & 102). Incidentally, it also records payments made to Appellant of Rs.2,48,12,500 and Rs.88,62,500 (pg.102 of PB-Vol-1), Rs.19,61,70,835 & Rs.19,66,70,835 (pg.106 of PB-Vol-1). In all DLF had paid an amount of Rs.175,62,50,000 to various parties including the Appellant for acquiring land of Ac 14.02 gts. The Appellant in all received an amount of Rs.41,76,54,170 from DLF in this transfer of land of Ac 14.02gts.

It is submitted that Appellant never became owner of land of 14.02 acres which was transferred to DLF group companies. It had rights (which was acquired at the instance of DLF), but the land owners, claimants and others have directly transferred the land to DLF group companies. The sale deed refers to compromise petition and in last para of pg.100 of pb Vol-1 records as under:
"And whereas in pursuance of the said understanding the parties hereto are executing this Sale Deed in favour of the Vendees for the schedule property total admeasuring Ac.14.02 gts in Sy.No.263 to 270 situated at …".

The above developments would establish the true beneficiary of land, and for whom and whose benefit the Appellant worked. The above MOUs, compromise petition and sale deed would establish and evidence the fact that Appellant is an aggregator and was acting as an agent of DLF. It is important to note that the Appellant was paid an amount of Rs.41,76,54,170 along with others. It is submitted that, the Appellant, out of the above amount received, at the instance and for the benefit of DLF, had paid in cash and through cheques to various parties involved in the sale deed. A list of such payments was filed on record at the time of hearing. It is submitted that while the cash payments of Rs.24,94,00,000 made to various parties are disallowed by invoking section 40A(3) of the Act, an amount of Rs.21,08,45,001 is disallowed by invoking section 40a(ia) of the Act (by reducing the disallowance of Rs.7,21,00,000 made under section 40A(3) of the Act).

It is a fact emerging from record that the DLF group for acquiring land of Ac 14.02 guntas had paid consideration of Rs.175,62,25,000. Out of the above Rs.131,37,83,330 was paid by it directly through banking channel to the landowners, claimants and others. An amount of Rs.2,48,12,500 was paid to Mali Florex Limited. The balance amount of Rs.41,76,54,170 was paid to Appellant by DLF.

The Appellant by utilising the above funds of Rs.41,76,54,170 and also the amounts of Rs.17,52,87,500 and Rs.50,62,500 (Pg.195 of PB-Vol-1) it received from DLF in other Sale Deed dated 24.08.2007 entered into by Sunbreaze Estate Developers Limtied (DLF Group company) with Mirza Mustafa Baig & Ors for acquiring another extent of land of Ac 5.06 gts, has paid the landowners in cash of Rs.24,94,00,000 as mentioned in the asst. order at pg.4, and Rs.21,08,45,001 disallowed under section 40a(ia) of asst. order at pg.6.

If all the MOUs and Sale deeds cited above are considered in proper perspective, the only irresistible conclusion that could be arrived at is that the Appellant had made cash payments and cheque payments as to various parties listed out in the asst. order to meet its obligations as per MOUs listed above, and at the behest of DLF.

The Appellant is an aggregator of land and had acted only as an Agent of DLF group. The Appellant was never the owner of land of Ac 14.02 gts and held all the rights, which on the same day (22.08.2007) were transferred by the landowners, claimants and others to the DLF Group companies. Therefore, the amount of Rs.24,94,00,000 and Rs.28,29,45,001 is not an expenditure for the Appellant. IT IS MOST RESPECTFULLY SUBMITTED THAT IT IS PART OF CONSIDERATION PAID BY DLF GROUP TO THE LANDOWNERS, CLAIMANTS AND OTHERS. The Appellant only acted as per the instructions of DLF Group. It is submitted that the amount of Rs.175,62,25,000 is an expenditure (inclusive of the amounts spent by the Appellant on behalf of DLF Group) is an expenditure for DLF group. Therefore, the same cannot be an expenditure in the hands of the Appellant for being disallowed under section 40A(3) and section 40a(ia) of the Act.

The Hon'ble Tribunal in the course of hearing has put a query to the counsel for Appellant, as to whether the cash and cheque payments made by the Appellant as disallowed under section 40A(3) and 40a(ia) of the Act forms part of total consideration of Rs175,62,25,000 paid by DLF Group for acquiring Ac 14.02 gts of land? The counsel for the Appellant submitted that it was more and above the payment of Rs.175,62,25,000. However, after due verification and re-verification of relevant fact, it is respectfully submitted that the cash payment of Rs.24,94,00,000 and the cheque payment of Rs.28,29,45,001 disallowed under sections 40A(3) and section 40a(ia) of the Act, forms part of total consideration of Rs.175,62,25,000. It is submitted that DLF group companies are the beneficiary of land of Ac.14.02 gts. Since, the payments are made by the Appellant at the behest of DLF group and since it essentially forms part of sale consideration paid to land owners, claimants etc., the cash component of Rs.24,94,00,000 and cheque payment of Rs.21,08,45,001 cannot be disallowed under section 40A(3) and 40a(ia) of the Act.

It is submitted that the Appellant acted as an agent as defined under section 187 of the Contract Act, 1872. For the sake of convenience, the said section is extracted hereunder:

Section 187 in The Indian Contract Act, 1872

187. Definitions of express and implied authority.—An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case."

It is submitted that various MOUs, agreements and sale deeds point out to the fact that the Appellant is an aggregator of land and its obligation under the MOUs is to pass on proper and legal title to the DLF or its group companies. The sale consideration paid by DLF and its group companies (except to the extent that ultimately was left with the Appellant for being appropriated as per clause 3.2 of MOU dated 19.06.2007, after paying to various persons as mentioned above) is not income of the Appellant as the Appellant was never the owner of Ac 14.02gts of land. For the same reason, the payments made by the Appellant (from out of the funds received from DLF) to landowners, claimants and others is not an expenditure in the hands of the Appellant. The Appellant in respect of the services rendered by it to the DLF and its group, has appropriated an amount of Rs.13,22,59,159 (pg.739 of PB in VOL-3), as its income. This income was offered to tax in the return of income. Therefore, the AO and the CIT(A) are not correct in treating the same as expenditure and in making/sustaining the disallowance under section 40A(3) of the Act.

In view of the above, it is respectfully submitted that the amounts paid by the Appellant to the land owners on behalf of DLF group of Rs.24,94,00,000 cannot be disallowed by invoking provisions of section 40A(3) of the Act."

14.5. On the other hand, ld. DR submitted that all the conditions required for disallowance u/s 40A(3) were satisfied in the instant case as the payments were debited to Profit and Loss account, all the payees are having bank accounts, purchase cost of the land was debited to the profit and loss account and even the assessee has no evidence to show that it is covered by any of the exceptions applicable for making payments u/s 40A(3) of the Act. He further submitted that the orders of lower authorities are in accordance with law.

14.6 The ld.DR for the Revenue had also filed the written submissions wherein it was submitted as under :

> *Disallowance u/s 40A(3) of Rs.24,94,000/-. The conditions required for disallowance u/s 40A(3) are satisfied in the instant case as follows :*
>
> - Payments are debited to profit and loss account.
> - All the payees are having bank account.
> - Purchase cost of the land is debited to the Proft and Loss account.
> - Assessee has no evidence that his case is covered by the exceptions applicable for making payments u/s 40A(3) as prescribed u/r 6DD of the IT Act.
>
> *Case laws:*
>
> *• Nam Estates Pvt Ltd Vs ITO 428 ITR 186 Karnataka, 2020 - where land was bought as trading stock, 40A (3) provisions were applicable.*
>
> *• Porwal Udhyog (India) Vs CIT 135 ITR / 591 (MP), 1982*
>
> *• Aditya Birla Nuvo Ltd Vs ACIT 13 ITR 128, ITAT Mumbai, 2012—Burden of proof is on assessee to establish exceptional & unavoidable circumstances of Rule 6D1) if applicable.*
>
> *• Attar Singh Gurmukh Singh Vs ITO, 59 Taxmann.com 11, 1991, SC.*

14.7. Heard the rival contentions and perused the material on record. On perusal, we find that

(a) the Assessing Officer has held that the assessee was not an agent of DLF and became the owner of the land pursuant to the order passed by Lokadalat on 22.08.2007.

(b) The Assessing Officer after relying upon the MoU entered by the assessee with DLF mentioned that the DLF will purchase the land from the assessee @ 12.50 crores per acre.

(c) The Assessing Officer held that the land is a trading asset and the cost was debited to profit and loss account.

(d) The assessee had made part payment in cash and part in cheque to various 28 persons mentioned in Para 1 at page 4 of his order.

14.8 On the other hand, the ld.CIT(A) had given the following reasoning for making the disallowance u/s 40A(3) of the Act.

(i) Assessee is not agent of DLF as it has become owner of lands on relinquishment of rights by the landlords and claimants by virtue of Order of Lok Adalat in OS.No.481/2007 dated 22.08.2007.

(ii) The Appellant has not recognised revenue from DLF nor expenditure paid to landlords/claimants, which it should have done. The Appellant was using non-accounting to circumvent the sprit of taxation system and transparency.

(iii) Even if the Appellant is an agent still it will not absolve it from requirement of section 40A(3).

(iv) The claim of Appellant that payments have been made by DLF group is false and completely unsubstantiated and no confirmation with regard to the same is filed.

(v) Appellant has incurred expenditure and has not filed any proof that DLF has accounted for this.

(vi) The submission of the Appellant that payments were made to the persons, who subsequently registered lands in favour of DLF group concerns is not correct.

(vii) The appellant has made these payments and DLF group has made payment to the Appellant.

(viii) The DLF has paid Appellant through cheque, and Appellant chose to withdraw the amount from bank and paid cash.

(ix) The Appellant bought the land as stock in trade and has sold the same to the DLF entity, therefore the claim that it is capital outlay in the hands of appellant is rejected.

(x) Exception were not established, and is a self serving theory.

14.9 We found that the lower authorities trying to focus was on the facts that the assessee was not an agent for DLF and further, the assessee was the owner of the land and there was no confirmation by the DLF to make such payments on its behalf to the land owners, therefore the additions were made.

14.10 The Assessing Officer as well as the ld.CIT(A) in their respective orders have selectively mentioned the MoUs dated 06.06.2007, 19.06.2007 and 30.06.2007 entered by the land owners and claimants in their orders.

14.11. We find by virtue of the MoU dated 06.06.2007 Mohd.Gayasuddin & other legal heirs (All are legal heirs to Mohd. Aleemuddin – original owner of land measuring 51 acres) had agreed to sell the land to an extent of 14.02 acres for a consideration of Rs.54,61,00,000 to DLF. Out of the said consideration of Rs.54.61 crores, DLF paid Rs.10,60,00,000 (Pg.42 of PB- Vol-1) as advance to Mohd.Gayasuddin & other legal heirs and further agreed to pay the balance consideration therein of Rs.44,01,00,000 (pg.43 of PB – Vol-1) at the time of registration. The said MoU was entered by Mohd.Gayasuddin & other legal heirs as 1st Party, the assessee as a 2nd party and the DLF as the 3rd Party. As per the above MOU, it was the duty of Appellant (2nd party) (pg.44 of PB-Vol-1) to ensure that the parties therein shall execute the sale deed in favour of DLF as per

the MOU. The clause 3.1 of the MOU dated 06.06.2007 provides as under :

> *"3.1 The Second Party acknowledges and undertakes to ensure that the First Party shall execute the sale deed in favour of the Third Party within the time specified in this Agreement in compliance with the various terms of the agreement."*

14.12 Further, the MOU at (at pg.51 of PB- Vol -1) contains the details of litigation pending. At page 51, the details are as under :

Sl.No.	Case No.	Court
1	OS No.803 of 2003	On the file of the 1st Additional Senior Civil Judge, RR District
2	OS No.2323 of 2004	High Court of Andhra Pradesh, Hyderabad
3	D25579 to 5584 of 2006 & Batch	Before the Joint Collector, Ranga Reddy District.
4	SLP No.5092 of 2006 and Batch	On the file of Hon'ble Supreme Court of India
5	OS No.25 of 2007	On the file of District Judge (Vacation Judge) at Ranga Reddy District Courts.

14.13. As various litigations were pending between Mohd.Gayasuddin & other legal heirs on the one hand and the other claimants, therefore, another MOU dt.30.06.2007 was entered (pgs. 53 to 64 of PB- Vol-1) by the DLF with family members of K.Muthyam Reddy in respect of the very same land of 14.02 acres for a consideration of Rs.22.50 crores. An advance of Rs.2 crores was paid by DLF directly to the family members of Mr.K.Muthyam Reddy (clause 2.10 @ pg. 58 of PB- Vol-1). The balance consideration of Rs.20.50 crores was to be paid upon execution of sale deed (clause 4.2 @ pg.59 of PB – Vol-1). In the second MOU, the assessee namely, Demi Realtors was mentioned as 2nd Party. In clause 2.10, 2.11 and 3.1 it is mentioned as under :

> *"2.10 The First Party and Second Party had entered into an agreement of sale on 24.05.2004 and in consideration of the agreement of sale, the second party has already paid Rs.2,50,000/- (Two Lakhs Fifty Thousand) till date to the First Party and the First Party acknowledges the receipt of the said amount vide separate receipts. On the signature date, the Thrid Party had made a payment of Rs.2.00 Crores (Rupees Two Crores) to the First Party vide Cheque # 087530 drawn on ICICI Bank, New Delhi Branch.*
>
> *2.11 That upon the First Party executing the sale deeds / conveyance deeds in favour of Third Party, the Seocnd Party shall execute a reconveyance deed in faovur of the First Party for Ac.10-20 Gts in Sy.Nos.271 to 273.*
>
> *Rights and Obligations of the Second Party.*
>
> *3.1 The Second Party acknowledges and undertakes to ensure that the First Party shall execute the sale deed in faovur of the Third Party within the time specified in this Agreement."*

14.14 From the perusal of the terms of the MoU and the conditions mentioned therein, it is clear that the DLF was purchasing the land from the land owners / claimants. The assessee was only a facilitator and assessee's duties were only to ensure that the first party in both the agreement shall execute the sale deed in favour of the third party within the time specified in the agreements. At no point of time, it was stipulated by the MOU or otherwise that the assessee (Demi Realtors) would buy the property or acquire the land admeasuring 14-02 Gts. All along it was the intention of the parties that the land would be owned by DLF only and for that the assessee was to ensure that the land owners / claimants / litigants should transfer the clear title to the DLF.

14.15 With the above-noted objective in mind, the assessee had used its good offices, and a settlement was arrived at among all the litigated parties before the Lokadalat on 22.08.2007. The compromise petition was recorded before the Lokadalat between

66 plaintiffs (litigant) (represented by them or by their legal heirs) and M/s. Demi Realtors. As per the Award of the Lokadalat, Paras 5 to 8 and 10 are recorded as under :

> *"5. That this compromise will be binding on the plaintiff and the defendants 1 to 32 and all their legal heirs, representatives or their nominees or any person claiming through them in respect of the land to an extent of Ac.41.34 gts. Comprising of Sy.No.262 Ac.1-00 Gts; 263 Ac.1-27 gts; 264 Ac.2-04 gts; 265 Ac.2-01 gunta; 266 Ac.0-34 gts; 267 Ac.1-24 gts; 268 Ac.2-00 gts; 269 Ac.3-23 fts; 270 Ac.8-03 gts; 271/1 Ac.2.03 gts; 272/1 Ac.6.39 gts; 273/1 Ac.9.17 gts & 274 Ac.0.22 gts situated at Puppalguda Village, Rajendranagar Mandal, Ranga Reddy District. The remaining land to an extent of Ac.8.36 gts in Sy.No.273 (part): Ac.0.18 gts in Sy.No.271; and Ac.0.15 gts in Sy.No.272, totally admeasuring Ac.9.29 gts is owned and possessed by M/s. Bhargavi Constructions represented by Sri V. Ramachandra Rao, the GPA Holder of defendants 1o to 19 Sri V. Ramachandra Rao and Sri V.K. Vishwanatham. Neither the plaintiff nor the defendants 1 to 33 are nothing to do with the said property.*
>
> *6. That the plaintiff and the defendants 1 to 32 have agreed to execute appropriate conveyance deed / agreement of sale-cum-GPA in favour of defendant No.33 or its nominee as required and requested by defendant No.33.*
>
> *7. The plaintiff and the defendants 1 to 32 agreed to execute documents relinquishing all their rights, title, claims and interest over the suit schedule property in favour of defendant No.33 or its nominees by executing or joining in any registered conveyance / sale deeds on payment of agreed consideration by the defendant No.33 and in assisting in having the names of Defendant No.33 or its nominee mutated in the revenue records.* ***The defendant No.33 has already paid an amount of Rs.11,84,50,000/- to defendants No.1-7*** *and their family members and* ***Rs.2,50,00,000/- to defendant No.22.*** *At the request of plaintiff and defendant Nos.1-****32 the defendant No.33 shall pay Rs.118,77,83,330/-*** *consideration as under to plaintiff and defendant Nos.1 – 32 and others.*
>
> *……*
>
> **table*

Sl.No.	*In favour of*	*Amount*	*D.D. No.*
1			
2			
193			

> *All the above demand drafts are drawn on City Bank, NA, Gurgaon.*

> *8. That the amount paid by the defendant No.33 is towards full and final settlement of all the rights, claims, interests of the defendants 1 to 32 over the suit schedule property and the plaintiff and the defendants 1 to 32 shall not henceforth have any further right in whatsoever manner over the suit schedule property.*
>
> *10. The plaintiff and the defendants 1 to 32 agree to execute and sign any further or necessary documents for perfecting the rights of defendant no.33 or its nominee(s).*

14.16 Interestingly, all the demand drafts (referred in Para 7 hereinabove of the Award of Lok Adalat) were issued in favour of the landlords / litigants before the Lok Adalat by City Bank, NA Gurugaon dt.14.08.2007 from the account of DLF. None of the demand drafts referred in the Award of the Lok Adalat in Para 7 was issued by the assessee before us.

14.17 Further, in our view, the Award passed by the Lok Adalat on 22.08.2007 was binding on the parties to the dispute only and no appeal lies against the award passed by the Lok Adalat. Section 21 of Legal Services Authority Act, 1987 provides as under :

> *"21. Award of Lok Adalat.—1*
>
> *[(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section(1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).]*
>
> *(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award."*

14.18 Though, it is correct that the Award passed by the Lok Adalat is final and binding on the parties, however, any Lok Adalat Award being deemed decree pertaining to transfer of immovable properties was required to be registered.

14.19 Further, the parties were required to execute the title document transferring the interest in the immovable property by a Registered Deed under the Transfer of Property Act 1872. Admittedly, on the same date i.e., 22.08.2007 of entering into agreement and passing of the award by the Lok Adalat, the same very 67 plaintiffs (their legal heirs / claimants etc.) have executed a sale deed in favour of DLF Group of Companies thereby transferring the land of Ac.14-02 gts in its favour. The copy of the sale deed is placed at pages 93 to 118 of the paper book. Admittedly, the total sale consideration mentioned in the registered sale deed dt.27.08.2007 was mentioned at Rs.175,62,50,000/-. At pages 101 and 102, the details of the payments made by the purchaser to the seller and other persons were mentioned. The sale deed mentioned that the first party consists of 38 persons, the second party consists of 10 persons and the third party consists of 10 persons. Besides the three parties, the names of 9 claimants including the name of the assessee were also mentioned at page 97 of the paper book.

> *"8. DEMI REALTORS, a partnership firm having its office at G2, Fortune Heights, Shantinagar Colony, Masab Tank, Hyderabad – 500028. Represented by its Managing Partner Mr. D. S. Karunakar Reddy S/o. D. Sudhakar Reddy (hereinafter called Demi Realtors)."*

All these persons collectively mentioned as 'vendors' at page 97.

> (THE FIRST PARTY VENDOR, SECOND PARTY VENDOR, THIRD PARTY VENDOR & FOURTH PARTY VENDOR are hereinafter collectively referred to as "THE VENDORS")

14.20 The sale deed at page 101 and page 102 had also recorded the total sale consideration paid by the DLF was to the tune of Rs.175,72,50,000/- and in the said details, it is also mentioned that the following payments Rs.2,48,12,500/-, Rs.88,62,500/- (Pg.102 of PB-Vol.1), Rs.19,61,70,835/- and Rs.19,66,70,835/- (Page 106 of PB Volu-1) were received by the assessee. The sale deed further mentioned that an amount of Rs.19,61,70,835/- and Rs.19,66,70,835/- were received by the assessee through demand draft No.810012 and No.810091, respectively, drawn on City Bank, NA Gurgaon Branch dt.14.08.2007.

14.21 From the sequence of the documents referred hereinabove, it is clear that the assessee was merely a claimant / consenting party, referred in the sale deed and was not the owner of the land. Therefore, the conclusion arrived at by the lower authorities that the assessee was the owner of the land is without any basis. Even by virtue of the Award of Lok Adalat, the parties had agreed to transfer the land to the "assessee or to its nominee" and further, they had received the consideration as mentioned at para 7 of the award is Rs.118,77,83,330/- from the assessee. However, the amount of Rs.118,77,83,330/- as mentioned in the Lok Adalat Award was paid directly by the DLF to the landlord / owners and it was not paid by the assessee. Quite contrary to this fact, in the award it was mentioned that the assessee had paid the amount whereas in fact, the consideration was paid by the DLF.

14.22. The finding recorded by the ld.CIT(A) that the assessee was a de-facto owner of the property and the registration was merely a formality, in our view, is required to be recorded for the purpose of rejection only. The law on the transfer of immovable property as well as the effect of the Award passed by the Lok Adalat is fairly settled. As per provisions of the Transfer of Property Act, the transfer of immovable property can only take place by way of registered document and by transfer of possession. In the present case, though the Award was passed on 22.08.2007 but on the very same day, the same parties to the Award along with others have transferred to clear title by registered sale deed to DLF and the possession was also handedover to DLF. Needless to say, the landlord / owners have received their respective consideration as mentioned in the Lok Adalat Award as well as the sale deed from DLF. It is undisputed that the transfer of land can only take place by a registered document as contemplated under the Transfer of Property Act. For the above said purposes, we may rely upon the decision of the Hon'ble Supreme Court in the case of Suraj Lamp & Industries (P.) Ltd Vs. State of Haryana reported in [2011] 14 taxmann.com 103 (SC) held as under :

> *"16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is*

time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision."

14.23 In our considered opinion, the assessee was merely working for the advancement of the transfer of title in favour of DLF as per MOUs dt.06.06.2007 and 30.06.2007. The role of the assessee was merely to ensure the transfer of the title to the DLF. At no point of time, the assessee was the owner of the land. In fact, assessee had only acted merely an agent / facilitator working for the interest of the DLF. For all practical purposes, the assessee was the agent of the DLF.

14.24 Our conclusion is that the assessee was agent of the DLF which is not only based on our understanding of various MOUs, but also of due to the Award of the Lok Adalat and the subsequent sale deeds, reproduced hereinabove. The finding recorded by the Assessing Officer and ld.CIT(A) in their orders is contradictory. At page 75 of the order of Ld.CIT(A) which was mentioned as under :

> *"The appellant seems to be an agent which has not only indulged in non-accounting transactions but also being a facilitator for the evasion of tax for other entities."*

14.25 Similarly, the Assessing Officer at page 5 of his order, recorded as under :

> *"It is noticed that the firm made payments to various parties other than landlords / claimants partly through its account and partly directly from the DLF. Even though payments are made directly from the DLF to various brokers, the firm is liable to deduct TDS on these payments as payments are made directly by DLF to the parties as per the instruction of the assessee.*

14.26 Thus, it is clear that the Revenue was also not sure whether the assessee was the agent of the DLF or not. At some places, the assessee was treated as an agent of DLF and at other places, assessee was treated independently. As mentioned hereinabove, the assessee was the agent of the DLF and was working under the instructions and on behalf of DLF only and hence, assessee was required to be treated as 'Agent' only.

14.27 Having held that the assessee was an agent of DLF, now we have to examine whether the payments disallowed by the Assessing Officer and confirmed by the ld.CIT(A) u/s 40A(3) in cash are required to be disallowed in the hands of the Assessing Officer or not.

14.28 We find that the Assessing Officer at page 4 of his order has given a reference of the payments made by the assessee in violation of section 40A(3) of the Act.

14.29 The payments made by DLF at the time of entering into agreement, passing of Lok Adalat Award and sale deed along with the payment made by the assessee in cash at the time of registration of the sale deed to Sri K.Mutyam Reddy and family are summarized hereinbelow :

Payments made by	DLF (ADV) MOU 30.6.07	Payments made by DLF referred to in Lokadalat order as well as Sale Deed with Grandbay dt.22.8.07 Pg.102 to 107				Total payment given by DLF	Payment given by Demi Realtors (Assessee) on 22.08.07
	A	B Rs.	D.D.Nos.	C Rs.	D.D.Nos.	(A+B+C) Amount in Rs.	D Rs
K.Mutyam Reddy	20000000		810023	15000000 30000000	810106 810107	80000000	**60000010**
A.Rani		2500000	810002	2500000	810075	5000000	**5000000**
A.Shobha		2500000	810003	2500000	810076	5000000	**5000000**
K.Anjamma		6250000	810020	6250000	810103	12500000	**12500000**
K.Kavita		2500000	810022	2500000	810105	5000000	**5000000**
K.Chandana		11550000	810021	11550000	810104	23100000	**23100000**
K.Nagi Reddy		11600000	810024	11600000	810108	23200000	**11600000**
K.Ranga Reddy		11550000	810025	11550000	810109	23100000	**11550000**
K.Ravinder Reddy		11550000	810026	11550000	810110	23100000	**11550000**
P.Aruna		2500000	810054	2500000	810164	5000000	**5000000**
Y.Jayamma		2500000	810072	2500000	810195	5000000	**5000000**
						0	**5000000**
Total :						200000000	160300010

14.30 After examination of the table reproduced hereinabove, it is clear that DLF has made the payment of Rs.20 crores to K. Mutyam Reddy and family as per the MoU dt.30.06.2007. However, besides that the assessee had also paid the amount of Rs.16,03,00,010/-. Interestingly, as per the sale deed dt.22.08.2007 mentioned at page 106, the assessee had received sum of Rs.196,170,835/- and Rs.196,670,835/- vide draft no.810012 and 810091 dt.14.08.2007 drawn on City Bank, NA Gurugaon from DLF. It is the case of the Assessing Officer that out of the said amount of Rs.39,28,41,670/-, the assessee had paid an amount of Rs.16,03,00,010/- to K. Mutyam Reddy and family at the time of registration of the sale deed.

14.31 The payment of the cheque / draft amount by DLF to K. Mutyam Reddy and family and the payment of cash by the assessee to K. Mutyam Reddy and family are integral and essential part of the same transaction, benefitting the DLF. The close, proximate time and relationship of paying the amount of Rs.39.28 crores to the assessee by DLF and withdrawal of the cash thereafter by the assessee and making the payment to K. Mutyam Reddy and family, clearly shows that the assessee was working on behalf of the DLF. Therefore, the real beneficiary of the whole transaction is DLF and hence, the disallowance, if any was required to be made in the hands of DLF only. The chain of documents and the transactions entered into by the parties, clearly show that the cash was paid through the above said devises with a view to circumvent the liability of the DLF.

14.32 We fail to understand as to why the assessee, who is neither the seller of the land nor the buyer of the land would pay the amount of Rs.16,03,00,010/- to K. Mutyam Reddy and family at the time of registration of the sale deed. In our view, assessee was paying amount on the directions of DLF only. Further, this cash paid by assessee is indirectly forming part of total sale consideration of Rs.175.72 crore.

14.33 Further, the summary of the cash payment given by the assessee to the various landlords, agents and other claimants are captured by the Assessing Officer. The cash payment receipts were forming part and parcel of the seized material found during the course of search. In fact, the assessee had accounted for the money given in cash in the ledger filed before the Assessing Officer / ld.CIT(A). We have summarized the cash payment and the corresponding ledger entry in the following table :

S.No	Name of Party	Amount paid	Cash book Pg. No.	Ledger A/c. Pg. No.
1	Y. Jayamma (Landlord)	50,00,000	817	1028
2	K. Anjamma (Landlord)	1,25,00,000	812	903
3	K. Mutyam Reddy (Landlord)	6,00,00,000	812	907
4	K. Kavita (Landlord)	50,00,000	812	906
5	P. Aruna (Landlord)	50,00,000	812 & 813	934
6	A. Shoba (Landlord)	50,00,000	813 & 814	856
7	A. Rani (Landlord)	50,00,000	813	854
8	K. Chandana (Landlord)	2,31,00,000	813	904
9	K. Nagi Reddy (Landlord)	1,16,00,000	813	908
10	K. Ranga Reddy (Landlord)	1,15,50,000	813	909
11	K. Ravinder Reddy (Landlord)	1,15,00,000	813	910
12	Mohd Moinuddin (Landlord)	20,00,000	813	923
13	Jagat Singh (Landlord)	2,00,00,000	813	902
14	Parveen Begum (Agents)	9,50,000		

15	Abdul Salma Begum (Agents)	9,50,000		
16	Massrath Sultana (Agents)	9,00,000		
17	Sharifa Begum (Agents)	9,50,000		
18	Hasina Begum (Agents)	9,00,000		
19	Syed Gousi Begum (Agents)	9,50,000		
20	Shajhan Begum (Agents)	9,50,000		
21	Nusrathunnisa (Agents)	9,00,000		
22	P. Prabhakar Rao (Agents)	2,07,56,250	817 & 818	
23	G. Yadagiri (Agents)	69,18,750	818	
24	P. Narayan Swamy (Agents)	80,00,000	817	
25	P. Dilip Kumar (Agents)	75,00,000	814	935
26	Syed Naseer (Agents)	75,00,000	814	995
27	A. Vittal Reddy (Agents)	89,50,000	813	859
28	A. Rathangapani Reddy (Agents)	50,00,000	790	

14.34 From the perusal of the above table, it is clear that except the amount of Rs.70 lakhs paid to the following persons all have been duly accounted for in the ledger :

15	Abdul Salma Begum (Agents)
16	Massrath Sultana (Agents)
17	Sharifa Begum (Agents)
18	Hasina Begum (Agents)
19	Syed Gousi Begum (Agents)
20	Shajhan Begum (Agents)
21	Nusrathunnisa (Agents)

14.35 In fact, we have also examined the receipts issued by the persons mentioned against Sl.No.1 to 15 and 22 to 28. All the receipts issued by these persons were in respect of survey no.262 to 274 situated at Puppalguda Village, Rajendra Nagar Mandal, Ranga Reddy District. The land falling in Sy.No.262 to 274 was purchased by the DLF through this registered sale deed by paying the total consideration of Rs.175,72,50,000/-. It would be useful to mention here that the Assessing Officer at page 6 of his order while dealing with the issue of disallowance u/s 40(a)(ia) had given a table. In the said table, the persons

mentioned at Sl.Nos.22 to 28 are also available and as per the case of the Assessing Officer, the DLF had made direct payment by cheque to them. The relevant portion of the said table is as under :

Sl.No.	Name	Payment made by the DLF	Payment made by Demi Realtors
9	P. Prabhakar Rao	2,07,56,250	2,17,56,251
10	G. Yadagiri	69,18,750	74,18,750
11	Narayana Swamy	80,00,000	90,00,000
12	Vittal Reddy	89,50,000	89,50,000
13	B. Mukund Rao	92,25,000	11,20,000
14	Syed Naseer	10,00,000	75,00,000
15	P. Dilip Kumar	10,00,000	75,00,000

14.36 Therefore, our conclusion that the assessee was acting as an agent of the DLF gets strengthened by the own finding of the revenue. As held by us, the assessee was working as Agent of the DLF and all the money given by the assessee was only towards the sale consideration paid to the land owners / agents / brokers which were duly accounted for in the ledger of the assessee and the same matches with the consideration received by the assessee from the DLF albeit the same was mentioned in the sale deed also. In our view, the whole idea of making the payment by the assessee after receiving it from the DLF was to make the payment in cash on behalf of DLF to the land owners / claimants. There was no other purpose to make such a huge payments to the assessee when admittedly the assessee was neither the landlord nor having interest / claim in the land.

14.37 Further, when the Assessing Officer and the ld.CIT(A) in their orders have mentioned that the assessee has not produced evidence that the DLF has accounted for these entries in their account. In our view, once the sale deed itself was available with the above noted officials which had given the

details of the money received by the assessee, as a claimant, from the DLF and further, when the assessee has submitted that the amount was spent by it as an agent and DLF paid to the persons mentioned hereinabove then the amount paid by the assessee in cash to these persons in our opinion was paid pursuant to the direction of the DLF. Moreover, during the assessment proceedings, the assessee filed the revised Profit and Loss account on 08.03.2010 for the accounting year ended on 31.03.2008. However, both the lower authorities have failed to take note of the revised profit and loss account. We may mention that all receipts of money from the DLF by the assessee were not income of the assessee. In fact, the assessee has not taken the amount spent by it in the revised profit and loss account as its expenditure.

14.38 In our considered opinion, the disallowance for violation of the provision of Section 40A(3), if any, is required to be made in the hands of DLF, as DLF, only has claimed the amount spent (subject to the appeal) as expenditure. In our view, merely because the assessee, being an agent, has spent the amount in cash on behalf of the DLF, the said amount cannot be disallowed in the hands of the assessee and was required to be disallowed in the hands of the DLF. For the above said purposes, we may fruitfully reply upon the decisions of Hon'ble Punjab and Haryana High Court in the case of Voith Fabrics India Limited reported in 64 DTR 58 and CIT Vs. Shelly Passi reported in 350 ITR 227. In the case of Shelly Passi (supra), the Hon'ble Punajb and Haryana High Court at para 5 of its order has held as under :

"5. The Tribunal while accepting the plea of the assessee had categorically held that the money amounting to Rs.60,19,000/- was directly deposited in the bank account of RCIL. Reference was also made to the paper book which had been filed before the Tribunal. Another factor which was considered by the Tribunal was that the assessee was only an agent of RCIL and therefore, question of any disallowance in the hands of the assessee was only an agent of RCIL and therefore, question of any disallowance in the hands of the assessee was not attracted. The aforesaid findings have not been shown to perverse or erroneous in any manner."

14.39 In the light of the above facts and respectfully following the above cited decisions, we deem it appropriate the restore the issue to the file of the Assessing Officer to decide the issue in the light of the following directions :

1) The Assessing Officer shall verify from the record as to when the assessee had received the amount from the DLF for paying to the land owners / claimants / brokers.

2) If the Assessing Officer, on verification of the records, was able to arrive at a conclusion that the amounts found to have been paid in cash after receiving it from the DLF, as per the search document which was relatable to sy.no.262 to 274 situated at Puppalguda Village, Rajendra Nagar Mandal, Ranga Reddy District, then the Assessing Officer shall not make any disallowance in the hands of the assessee u/s 40A(3) of the Act.

3) The assessee has not made any corresponding entries in its ledger for the amount paid in cash to Abdul Salma Begum (Agents), Massrath Sultana (Agents), Sharifa Begum (Agents), Hasina Begum (Agents), Syed Gousi Begum (Agents) Shajhan Begum (Agents) and Nusrathunnisa (Agents) for Rs. 9,50,000/-, Rs.9,50,000/-, Rs.9,00,000/-,

Rs.9,50,000/-, Rs.9,00,000/-, Rs.9,50,000/-, Rs.9,50,000/- and Rs.9,00,000/-, respectively, totaling to Rs.70 lakhs. This amount shall be disallowed by the Assessing Officer under Section 40A(3) of the Act as no evidence was furnished by the assessee even before us showing any linkage of the money paid to these persons either in the ledger of the assessee, with the purchase / facilitation / help in that regard purchased by DLF of the lands situated at sy.no.262 to 274 situated at Puppalguda Village, Rajendra Nagar Mandal, Ranga Reddy District.

4) The Assessing Officer may disallow the amount, if any, in the hands of the DLF which was paid in cash by the assessee on behalf of DLF, if permissible in law subject to the period of limitation.

Needless to say that the Assessing Officer shall give due opportunity of being heard to the assessee while dealing with the issue. In view of the above, ground No.4 is allowed for statistical purposes.

15. **GROUNDS 5 TO 7**

Grounds 5 to 7 are with respect to **disallowance of Rs.21,08,45,001/- under section 40(a)(ia)** of the Act. In this regard, the assessee has drawn our attention to pages 5 to 7 of the assessment order which is to the following effect :

> *"It is noticed that the firm made payments to various parties other than Landlords / claimants partly through' its account and partly directly from the DLF. Even though payments are made directly from the DLF to various brokers, the firm is liable to deduct TDS on these payments as payments are made directly by DLF to the parties as per the instruction of the assessee firm.*

In this connection, the assessee was requested vide this office notice u/s 142(1) dated 19.11.2009 why the above payments should not be disallowed u/s 40(a)(ia) as the firm has not deducted any TDS. The A.R. of the assessee in his letter dt.26.11.2009 has submitted that Rabiya Begum is the daughter of late Sri Aleemuddin who is the original owner of the land along with his sons namely, Khairuddin, Kareemuddin, Azeemuddin and Jamaluddin. As she is the legal heir of the land, the provisions of section 40(a)(ia) are not applicable. He further submitted that most of the persons mentioned above are relatives of the land lords and payments are made to avoid disputes in future in respect of the property and therefore provisions of 40(a)(ia) are not applicable.

The submissions of the assessee are considered in respect of the payments made to Rabiya Begum and the same is accepted and for others the A.R's explanation is not acceptable for the following reasons :

(i) The payments made to the landlords or to the persons who have any rights in the lands are not liable for TDS deduction. All the landlords and those who have any disputed rights in the property are included in the Lok Adatat order and payments are-mentioned to those parties in the Lok Adalat Order. None of the above parties is a claimant as per the Lok Adatat Order. All the above parties have no rights in the lands and the assessee firm has not entered into any MOU or purchase agreement with the above parties. Basically, the above parties represent the active brokers who assisted the assessee firm in purchase of the lands or other close relatives of the landlords who played a key role in convincing the landlords for sale of the lands. Therefore, the provisions of TDS are clearly applicable.

(ii) The assessee firm has not produced any evidence to show that any of the above party has any right or interest in the lands purchased by the assessee firm.

(iii) It is also submitted that the assessee firm for avoiding the provisions of 40(ia) included all the active brokers and also the close relatives who played key role in convincing the land lords for sale of the lands in the sale deed as claimants.

Considering the above the above reasons the payments made Without TDS of Rs 28,29,45,001/- (Rs 33,8,78,334 (-) Rs. 5,53,33,333) is liable for disallowance. However, the cash payments made to brokers / agents which are already disallowed U/s.40A(3) of Rs.7,21,00,000/- are-excluded and the balance amount of Rs.21,08,45,001/- is disallowed and added to the total income of the assessee firm."

15.1 On appeal, the ld.CIT(A) had decided the issue at page nos.74 to 76 of his order, wherein he observed as under :

The second addition is regarding the non-deduction of TDS u/s 40(a)(ia). The provisions of section 40(a)(ia) read as under:-

"40. Notwithstanding anything to the contrary in sections 30 to 38 , the following amounts shall not he deducted in computing the income chargeable under the head "Profits and gains of business or profession',—

(a) in the case of any assessee—

(ia) any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid—

(A) in a case where the tax was deductible and was so deducted during the last month of the previous year, on or before the due date specified in sub-section (1) of section 139; or

'(B) in any other case, on or before the last day of the previous year:
……

Explanation.—For the purposes of this sub-clause,—

(i) 'commission or brokerage" shall have the same meaning as in clause (1) of the Explanation to section 194H :
…….

The AO has brought out in the table in page 6 of the assessment order that a sum of Rs.33,82,78,334/- has been made to various parties without deduction of TDS as per the laid down provisions of law. The appellant did not bring out as to why the provisions of TDS are not applicable to the said transactions. However, the appellant stated that being the legal heir of the land along with the relatives, the provisions of Section 40(a)(ia) is not applicable to avoid disputes in the property. The appellant seems to have its own figment of imagination in creating and arguing its own law which does not exist in the Income Tax Act. The payment made to the landlords and the brokers are to be deducted within the ambit of TTJS provisions as per the Income Tax Act and further no other situation has been brought out by the appellant. It is also important to note that in spite of so many years the appellant has not brought out anything on record to indicate that such incomes were duly accounted by these entities in their returns to even utilize the beneficial provisions if applicable. The appellant seems to be an agent which has not only indulged in non-accounting transactions but also being a facilitator for the evasion of tax for other entities. The appellant has brought out typically the same reasonings as brought out while contesting the addition u/s 40A(3) which has been dealt while adjudicating the first addition. The same has already been rejected while adjudicating that said ground and on the same lines the appellants argument are rejected for this ground.

The appellant continues to disown the expenditures on its account and attributes it to DLF without any basis. The findings of the AO has been challenged by the appellant regarding payments made to close relatives who had no right in the property but the appellant has not brought out anything otherwise on record to prove the contrary and the appellant states that it has not got any services for the facilitation of land through these so-called relatives. If that is the case, then the expenditure would get disallowed u/s. 37(1) itself as a not a bonafide payment. The appellant, in its over zealousness to escape the provisions of Section 40(a)(ia), has come up with the above new theory and then has self-servingly attributed this to DLF. It is reiterated that the agreement by DLF does not mention any specific details to whom the payments are to be made and how the same are to be made. It is a clear case of agreement wherein the desired quantum and parcel of land is to be given to DL? entity at the agreed price. Therefore, all the above submissions of the appellant are without any basis and justification.

The AO has been considerate in disallowing the amount of Rs21,08,45,001/- u/s 40(a)(ia) after considering the fact that certain amounts have already faced the rigors of Section 40A(3) to avoid double taxation. In view of the same, the amount of Rs.21,08,45,001/- is disallowed u/s 40(a)(ia) and the addition made by the AO has been confirmed. Accordingly, the ground no. 3 is dismissed.

15.2. Before us, ld. AR submitted that as the assessee has not debited the payments or expenditure to landlords / claimants, therefore, the question of invoking provisions of section 40(a)(ia) does not arise. In respect of the various agreements executed among the partners, the assessee submitted that ld.CIT(A) has not properly appreciated the agreements. It was contended that the agreement gave broad intention of the parties as to how the land was aggregated and how the consideration was paid. It was submitted that whatever the assessee has done, it was done on the instructions of DLF.

15.3. The ld. AR also filed written submissions in support of his case. The relevant portion of the written submissions pertaining to this issue reads as under :

"The Appellant reiterates its stand that it acted as aggregator and agent and relies on the submissions made in respect of ISSUE No.I i.e., disallowance under section 40A(3) of the Act. The Appellant submits that it had not treated the amounts received

from DLF and group as its income, and it neither treated the amounts paid to landowners/claimants and others as its expenditure. Therefore the question of invoking section 40a(ia) does not arise. It is submitted that the findings of the AO as well as CIT(A) are factually and legally incorrect. The Appellant, for the sake of brevity, relies on the submissions made in respect of the disallowance made under section 40A(3) of the Act. It is submitted that the disallowance of Rs.28,29,45,001, in all, and net disallowance of Rs.21,08,45,001 under section 40a(ia) of the Act is factually and legally incorrect.

It is prayed that the disallowance of Rs.28,29,45,001 (and net disallowance of Rs.21,08,45,001 after considering disallowance of Rs.7,21,00,000 under section 40A(3) of the Act), under section 40a(ia) of the Act may kindly be deleted."

15.3.1. Per contra, ld. DR submitted that in the instant case, all the payments were made by the assessee to parties other than landlords / claimants and the same were made directly by assessee or through DLF under assessee's instructions and even the payments made to 25 parties were brokers and their names were not listed in the Lok Adalat Award and hence, the disallowances made u/s 40A(3) by the AO have been telescoped while making disallowance u/s 40a(ia) in respect of the same parties and relied on the case law i.e., Palam Gas Service vs CIT, 394 ITR 300 (SC).

15.4. Heard the rival contentions and perused the material on record. We find that the Assessing Officer at page 6 of the order has given the tabulation, thereby indicating the payments that were made by DLF and assessee to the given persons. In the said table, it is mentioned as under:

Sl.No.	Name	Payment made by the DLF	Payment made by Demi Realtors
1	Syed Shafiuddin	5,00,00,000	3,10,00,00
2	Mohd Aleemuddin	10,00,000	--
3	Syd Husnuddin	4,00,00,000	--
4	Md. Basit	--	20,00,000
5	Md. Anwar	--	20,00,000
6	Sugra Begum	--	1,50,000
7	Banu Begum	--	1,50,000

8	Md. Asif	--	75,000
9	P. Prabhakar Rao	2,07,56,250	2,17,56,251
10	G. Yadagiri	69,18,750	74,18,750
11	Narayana Swamy	80,00,000	90,00,000
12	Vittal Reddy	89,50,000	89,50,000
13	B. Mukund Rao	92,25,000	11,20,000
14	Syed Naseer	10,00,000	75,00,000
15	P. Dilip Kumar	10,00,000	75,00,000
16	K. Goverdhan Reddy	--	3,00,00,000
17	Parveen Begum	--	9,50,000
18	Abdul Salma Begum	--	9,50,000
19	Massrath Sultana	--	9,00,000
20	Sharifa Begum	--	9,50,000
21	Hasina Begum	--	9,50,000
22	Syed Gousi Begum	--	9,00,000
23	Shajhan Begum	--	9,50,000
24	Nusratunnisa	--	9,75,000
25	Rabiya Begum	--	9,00,000

15.5. The details of payments made by the DLF to various persons are as under :

Sl.No.	Name	Payment made by the DLF
1	Syed Shafiuddin	5,00,00,000
2	Mohd Aleemuddin	10,00,000
3	Syd Husnuddin	4,00,00,000
9	P. Prabhakar Rao	2,07,56,250
10	G. Yadagiri	69,18,750
11	Narayana Swamy	80,00,000
12	Vittal Reddy	89,50,000
13	B. Mukund Rao	92,25,000
14	Syed Naseer	10,00,000
15	P. Dilip Kumar	10,00,000
	Total:	14,68,50,000

15.6 It is abundantly clear that out of the total disallowances of Rs.21,08,45,001/- made by the Assessing Officer on account of violation of section 40(a)(ia), an amount of Rs. 14,68,50,000/- was directly paid by the DLF to the persons mentioned in the preceding paragraph. Further, the Assessing Officer at page 11 of his order has mentioned that the following persons have admitted to have received the cash payments and

they have filed return of income admitting the receipts. The relevant portion of the order of the Assessing Officer is as under :

> "*Further, the cash payments made to the following parties are not disallowed as these parties have admitted the receipt of cash and filed the returns of income admitting these receipts.*
>
> | | | |
> |---|---|---|
> | *Mohd Moinuddin -* | *Rs.* | *20,00,000* |
> | *Sri Prabhakar Ráo* | *Rs.* | *2,07,56,250* |
> | *Sri G. Yadagiri* | *Rs.* | *69,18,750* |
> | *Sri Dilip Kumar* | *Rs.* | *75,00, 000* |
> | *Syed Naseer* | *Rs.* | *75,00,000* |
> | *Jagat Singh* | *Rs.* | *2,00,00,000."* |

15.7 As held by us in the preceding paragraphs, the assessee was merely acting as an agent of DLF, therefore, it will be wrong on the part of the Revenue to allege that the Principal (DLF) was bound by the instructions of the assessee. Once there was a Principal and Agent relationship between DLF and the assessee, then it will be wrong to hold that the assessee is liable for violation of provisions of section 40(a)(ia) of the Act for the payments made by the DLF to these 15 persons. The bare reading of provisions of section 40(a)(ia) makes it clear that the provisions of section 40(a)(ia) are not applicable for the payment made by the DLF (Principal) and as such, the authorities below were wrong in concluding that the assessee was liable to deduct the TDS on making the payment to them. We fail to understand under which provision of law, the assessee can deduct the tax when the DLF (Principal) was making the payments directly to these 15 persons.

15.7.1 With respect to the remaining payments, we have already disallowed an amount of Rs.70 lakhs made in cash by the assessee to Abdul Salma Begum (Agents), Massrath Sultana (Agents), Sharifa Begum (Agents), Hasina Begum (Agents), Syed Gousi Begum (Agents) Shajhan Begum (Agents) and

Nusrathunnisa (Agents) for Rs. 9,50,000/-, Rs.9,50,000/-, Rs.9,00,000/-, Rs.9,50,000/-, Rs.9,00,000/-, Rs.9,50,000/-, Rs.9,50,000/- and Rs.9,00,000/-, respectively, in the preceding paragraphs. Therefore, no separation adjudication is required.

15.8. With respect to the payments made by the assessee to various other persons as referred to in the table hereinabove, whereby the assessee had paid the amount of Rs. 9,76,20,001/-. out of the this, an amount of Rs.7,21,00,000/- (including Rs.70 lakhs disallowed by us) has already been the subject matter of our adjudication in the preceding paragraphs. In the above noted paragraphs, we have held that the assessee is merely an Agent and the amount paid in cash to these persons was on the instruction of DLF and therefore, the same cannot be disallowed in the hands of the assessee. For the same reason, we are of the opinion that the disallowance u/s 40(a)(ia) of the Act cannot be made in the hands of the assessee as there was no obligation on the par of the assessee to deduct the taxes. In view of the above said reasoning, we are of the opinion that the assessee was not liable to deduct the TDS on account of the payments made by the DLF or on account of the payment made by it as an agent of the DLF. In view of the above, the **grounds 5 to 7 raised by the assessee are partly allowed.**

16. **GROUNDS 8 & 9**

Grounds 8 and 9 are **pertaining to payments made to parties amounting to Rs.4.8 crores without TDS deduction**. With respect to these grounds, ld. AR has drawn our attention to Para 3 of the assessment order which reads as under :

"3. The Mirza Iqbal Ahmed and his family members are entitled to receive Rs.16.25 crores which can be seen as per page no.60 of annexure A/DSKR/SR/06, where the Mirza Iqbal Ahmed and his family have entered an MOU with DLF company and assessee firm dt.06.07.2007 for Rs.16.25 crores for relinquishment of rights in the land. However, in the final sale deed Mirza Iqbal Ahmed and his family members introduced three benami brokers namely, Mr. Abdul Salam Mohamad, Mr. Sami Ahmed and Mr. Mohd. Aizaj Ahmed. As per the sale deed an amount of Rs.4,80,00,000/- are paid to these persons form the above amount. The assessee firm mentioned in the final sale deed that the above three persons rendered assistance in purchase of the lands from the above persons and therefore Rs.4,80,00,000/- is shown as brokerage to these persons. This is done only to reduce the taxable income of the Mirza Iqbal Ahmed and his family members. Therefore, this amount is substantively taxed in the hands of the Mirza Iqbal Ahmed and his family members. However, in the final sale deed the assessee firm mentioned that the payments to the above persons were made for rendering the services for purchase of the lands and no TDS is deducted on the payments made to these parties. In this connection, the AR of the assessee firm was requested to explain why the payments should not be disallowed U/s 40(a)(ia). The A.R. of the assessee in this letter dt.26.11.2009 submitted that the payments made to the above persons is a part of the total sale consideration and these payments are made on behalf of the vendors of the land and therefore, the provisions of Section 40(a)(ia) are not applicable.

The submissions of the authorized representative are considered. The landlords on whose behalf these payments are made started that this amount is not part of the total sale consideration and the above parties are brokers as this fact is clearly mentioned in the sale agreement. There is no merit in the submissions made by the AR of the assessee firm. In the agreement the assessee firm mentioned that the payments to the above persons were made for rendering the services of purchase of the lands and therefore these payments are clearly attracts TDS provisions and hence the same are disallowed U/s 40(a)(ia) for non-deduction of TDS on 'Protective Basis' as these payments are treated as part of consideration to the landlords on whose behalf these payments are made and taxed in their hands substantively. Accordingly, the payments of Rs.4,80,00,000/- are aided to the total income of the assessee firm."

16.1. On appeal, the ld.CIT(A) confirmed the addition made by the Assessing Officer at page 77 and 78 of his order by observing as under :

"The third addition is regarding disallowance of Rs.4,80,00,000/- u/s 40(a)(ia) paid to three brokers on account of transactions with Mirza lqbal Ahmed and family members. The AO has noted that the introduction of the three brokers was a device used to reduce the taxable income of Mirza Iqbal Ahmed and family. However, as the same has been stated as

brokers, it is the duty of the appellant to deduct tax on the same for the service rendered. The appellant itself has claimed them to be brokers and therefore, is liable to deduct TDS on such payments. The appellant has itself during the course of submissions admitted these parties to be brokers hut has failed as to why the TDS provisions are not applicable.

The appellant, during the appeal proceedings submitted that the payments of Rs.4,80,00,000/- was made to the three persons on instructions of the land owner, Sri Mirza Iqbal Ahmed only. The statement of the appellant is without any basis and a clear after-thought, especially when the appellant has not disputed the finding that payment was made to the said persons for rendering the services for purchase of lands, as mentioned In the final sale deed. Also the appellant has not furnished any confirmations from the land p er in this regard. Therefore the appellant is trying to make contradictory statements just to escape the disallowance for non-compliance to the TDS provisions. The appellant has further also filed the same argument that the agreement was made between M/s. DLF and Sri Mirza Iqbal Ahmed and the appellant was only following the agreement. It is bizarre argument to make payments without TDS from its own bank account and get the property in your name when the appellant itself was a part of that agreement and nowhere does it state that the payments are made without TDS and the same will be accounted by the DLF group. Further the names of these recipients Mr. Abdul Salam Mohammed, Mr. Sami Ahmed and Mr. Mohammad Aizaj Ahmed do not feature in the agreement at -all.

In view of the above, the appellant is held liable for deduction of TDS on the payments of Rs.4,80,00,000/- made to the persons, who are treated as brokers by the appellant firm itself and accordingly disallowance of Rs.4,80,00,000/-. u/s. 40(a)(ia) is hereby confirmed. The appellant has not brought out anything on record to show that these parties have accounted for these receipts as income in the respective year. The appellant appears to be a facilitator for evasion of taxes for other parties by not complying with the provisions of the Income Tax Act for payments in cheque and of withholding tax and therefore, the AO has rightly made the said additions. In view of the same, the addition made in this regard is hereby confirmed and the ground no. 4 is dismissed accordingly."

16.2. Before us, ld. AR submitted that if the MOU dt.06.07.2007 (Page 71 to 76) AOS cum GPA dt.24.08.2007 (Pages 159 to 185) and Sale Deed dt.24.08.2007 (Pages 186 to 206) are read together, it is evident that the consideration was paid as per the desire of land owners / consenting parties and all these agreements will establish the fact that findings of Assessing Officer and ld.CIT(A) are incorrect and all the payments were

made to land owners / claimants and third parties are on behalf of DLF only.

16.3. Ld. AR further submitted that the Assessing Officer passed consequential order dt.30.12.2013 and the case of Mirza Jaleel Ahmed (Pages 1178 to 1183 of Volume 6) giving effect to the order passed by Hon'ble ITAT (Pages 492 to 503) (Volume-II),

16.4. The ld. AR also filed written submissions in support of his case. The relevant portion of the written submissions pertaining to this issue reads as under :

> *"The following agreements were entered into which have bearing on the above issue:*
>
> - *The family of Mirza Mustafa Baig & 3 of his siblings, Appellant herein and the DLF Commercial Developers Limited entered into MOU dated 05.07.2007 (pg.65 to 70 of PB – Vol-1) in respect of land measuring Ac5.06 gts. The DLF negotiated the price at Rs.33 crores (pg.67 of PB – Vol-1) and paid advance of Rs.4.5 crores (pg.67 of PB – Vol-1). The DLF further agreed to pay Rs.10 crores on or before 25.07.2007 and the balance at the time of execution of Sale Deed in respect of the above land.*
>
> - *The MOU specifically records that there is a suit pending which was by Mirza Raheem Baig in Suit OS.No.31 of 2004. After the demise of Mirza Raheem Baig the same is pursued by his sons Mirza Iqbal Ahmed, Mirza Jaleel Ahmed and Mirza Jameel Ahmed and daughters Srt. Kauser Begum, Rahamthunnisa Begum and Mahamooda Begum.*
>
> - *THEREFORE, ANOTHER MOU dated 06.06.2007 was entered into with the legal heirs of Mirza Raheem Baig as listed above by the DLF Commercial Developers Limited for purchase of the same land of Ac.5.06gts, for a consideration of Rs.16.25 crores (pg.73 of PB – Vol-1). The DLF paid advance of Rs.1,93,74,999 to the above 6 persons by cheques. That out of the balance, an amount of Rs.12,31,25,001 was to be paid within 60 days by DLF, and the balance at the time of entering into registered sale deed.*
>
> - *A registered AOS cum irrevocable GPA dated 24.08.2007 (pg.159 to 185 of PB- Vol-1) was entered into by the above parties, FOUR (4) consisting from Mirza Mustafa Baig and SIX (6) consisting from Mirza Raheem Baig with Appellant for a total consideration of Rs.46,34,00,000 including the advances paid of Rs.6,43,75,000 to the above parties in two MOUs. The balance of Rs.39,90,25,000 was paid to the above families*

including to the three person viz., Mr.Abdul Salam Mohammed, Samee Ahmed and Mohd. Aijaz Ahmed of Rs.1,60,00,000 each, in all amounting to Rs.4.8 crores. All the amounts were paid directly by DLF Commercial Developer Limited (pg.168 of PB- Vol-1). Sri D.S.Karunakar Reddy, partner of the Appellant was appointed and delegated powers in respect of land of Ac.5.06gts for dealing with the same, as mentioned therein.

A registered Sale deed dated 24.08.2007 (pg.186 to 206 of PB- Vol-1) was entered, on the same day (as the AOS cum GPA). The Appellant representing as GPA of all the above 10 parties mentioned above, transferred the land of Ac.5.06gts to M/s.Sunbreaze Estate Developers Limited for a consideration of Rs.64,37,50,000. This consideration included the payment already made to above 10 of Rs.41,54,00,000 and payment of Rs.4.8 crores to 3 parties viz., Mr.Abdul Salam Mohammed, Samee Ahmed and Mohd. Aijaz Ahmed of Rs.1,60,00,000 each. Thus in all an amount of Rs.46,34,00,000 was paid to above 13 persons listed out above. Apart from the above, the Appellant was paid an amount of Rs.17,52,87,500 and Rs.50,62,500, in all Rs.18,03,50,000, by the DLF in the above land transfer of Ac 5.06gts.

37. If the two MOUs mentioned above, and AOS cum GPA and Sale deeds cited above are considered in proper perspective, the only irresistible conclusion that one could arrive at is that the Appellant had acted and fulfilled its obligation as per MOUs dated 06.06.2007 & 19.06.2007 and the MOUs dated 05.07.2007 & 06.07.2007 listed above. The Appellant acted at the behest of DLF.

38. It is submitted that the Appellant is an aggregator of land and had acted only as an Agent of DLF group. The Appellant vide AOS cum GPA secured rights with respect to Ac. 5.06gts of land from the respective parties on 24.08.2007 and immediately on the same day had made over the said land to M/s.Sunbreaze Estate Developers Limited (a DLF Group Company). The total consideration paid by M/s. Sunbreaze Estate Developers Limited for the above land of Ac.5.06gts was Rs.64,37,50,000. This consideration included the payment already made to above 10 of Rs.41,54,00,000 and payment of Rs.4.8 crores to 3 parties viz., Mr.Abdul Salam Mohammed, Samee Ahmed and Mohd. Aijaz Ahmed of Rs.1,60,00,000 each. In all an amount of Rs.46,34,00,000 was paid to above 13 persons connected with the above land. Apart from the above, the Appellant was paid an amount of Rs.17,52,87,500 and Rs.50,62,500, in all Rs.18,03,50,000, by M/s. Sunbreaze Estate Developers Limited/DLF Group in the above transaction.

38. It is submitted that the payment of Rs.4.8 crores (to Mr.Abdul Salam Mohammed, Samee Ahmed and Mohd. Aijaz Ahmed of Rs.1,60,00,000 each) is made by M/s.DLF and its Group companies. M/s. Sunbrease Estate Developers Limited got the benefit of ownership of land. The question then is how this payment of Rs.4.8 crores can be considered as expenditure in the hands of the Appellant?

39. It is submitted that the AO had rightly made the addition of the above sale consideration of Rs.4.8 crores in the hands of the Mirza Iqbal Ahmed and others, and made only protective assessment in the hands of the Appellant. It is submitted that the family of Mr.Mirza Jaleel Ahmed & 5 others have approached this Hon'ble ITAT in ITA.Nos.944 to 949/Hyd/2011 (Pg.492 to 503 of PB – Vol-2) challenging various issues including the substantive addition of Rs.4.8 crore as ground no.3(b) before the Hon'ble ITAT (Pg.494 of PB – Vol-2). On a legal ground raised with respect to 'cost of acquisition' as being 'NIL' and that the question of levy of capital gains does not arise as per judgement of Hon'ble Supreme Court as held in the case of CIT Vs. B.C.Srinivasa Setty, the Hon'ble ITAT was pleased to remand back the legal issue to the file of AO. The Hon'ble ITAT did not go into other issues. In the consequential proceedings, the AO in one of the owners viz., Mr.Mirza Jaleel Ahmed (pg1283 to 1288 of PB – Vol-6) at para 5.3 (on pg.1286) had held that the amount of Rs.4.8 crores paid to the three mediators is the consideration indirectly received by the assessee group is not taxable in the hands of the assessee therein as there is no cost of acquisition for relinquishment of disputed rights. It is submitted that the AO impliedly accepted the fact that the payment of Rs.4.8 crores was to Mr.Mirza Jaleel Ahmed and 5 others.

40. Considering the above, without prejudice to the other grounds urged by the Appellant, it is submitted that the AO/Revenue has treated the amount of Rs.4.8 crores as the payment made to Mr.Mirza Jaleel Ahmed and 5 others. Therefore, the substantive addition made in their hands has become final. For the same reason, the said amount cannot again be added in the hands of the Appellant. It is submitted that the ld.CIT(A) is incorrect in upholding the protective addition.

41. Without prejudice to the above submissions, it is submitted that the Appellant acted as an agent as defined under section 187 of the Contract Act, 1872. For the sake of convenience, the said section is extracted hereunder:

Section 187 in The Indian Contract Act, 1872

187. Definitions of express and implied authority.—An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case."

42. It is submitted that various MOUs, AOS cum GPA and sale deed point out to the fact that the Appellant is an aggregator of land, and its obligation under the MOUs is to pass on proper and legal title to the DLF or its group companies. The sale consideration was paid by DLF and its group company to the land owners including the Appellant. Therefore, the question of treating the amount of Rs.4.8 crores as expenditure to the Appellant and making disallowance under section 40a(ia) of the Act is unsustainable on facts and in law.

> *In view of the above the protective addition of Rs.4.8 crores sustained by the ld. CIT(A) has to be deleted. It is prayed accordingly.*

16.5. Per contra, ld. DR submitted that the disallowance was made on protective basis for non-deduction of TDS.

16.6. Heard the rival contentions and perused the material available on record. Admittedly, the addition was made in the hands of the assessee by the Assessing Officer on protective basis and confirmed by the ld.CIT(A) on protective basis, as the additions were made in the hands of Mr. Mirja Jaleel Ahmed and another on substantive basis. The said Mr. Mirja Jaleel Ahmed had filed ITA.Nos.944 to 949/Hyd/2011 (Pg.492 to 503 of PB – Vol-2) challenging various issues including the substantive addition of Rs.4.8 crore. ITAT vide order dt.31.05.2012 had remand back all the issues to the file of AO. The copy of the order is available at page 492 of the paper book. Consequent to the order of the Tribunal, the Assessing Officer in the case of Mr.Mirza Jaleel Ahmed had deleted the addition in the hands of said Mirja Jaleel Ahmed. In Para 5.3 of the order of Assessing Officer dt.30.12.2013 it was held as under :

> *"5.3 Even if it is considered that the amount of Rs.4.80 crores paid to the three mediators is the consideration indirectly received by the assessee group for the detailed reason mentioned in points 1 to 7 above. It is received for relinquishment of disputed rights having no cost of acquisition and hence is also not taxable in the hands of the assessee group."*

16.7. As the Assessing Officer in the case of Mr.Mirza Jaleel Ahmed and 5 others had held that "indirectly Mr.Mirza Jaleel Ahmed and 5 others have received the amount", then it will be apposite to consider that the same amount cannot be considered as the commission paid by the assessee to Mr. Abdul Salam Mohamad, Mr. Sami Ahmed and Mr. Mohd. Aizaj Ahmed. The Revenue cannot treat the amount as a consideration

received by Mr. Mirja Jaleel Ahmed and family and simultaneously, it cannot hold the same amount as commission paid to Mr. Abdul Salam Mohamad, Mr. Sami Ahmed and Mr. Mohd. Aizaj Ahmed. In other words, Revenue cannot aprobate and reprobate with respect to payment received by Mr. Mirza Jaleel, who was signatory to Lok Adalat Award.

16.8 In our view, the order passed by the Assessing Officer pursuant to the direction of the Tribunal dt.31.05.2012 will have binding effect on the revenue and the revenue is estopped from challenging the finding of Assessing Officer.

16.9 Since in the substantive proceedings, the additions have been deleted from the hands of Mr.Mirza Jaleel Ahmed, therefore, the same addition cannot be sustained in the hands of the assessee before us.

16.10. In view of the deletion of the substantive addition in the hands of Mr.Mirza Jaleel Ahmed and others by the Assessing Officer in the order dt.30.12.2013 passed u/s 143(3) r.w.s. 254 of the Act, thereby holding it to be deemed amount received by the said appellants, we deem it appropriate to remand back ground nos.8 and 9 to the file of the Assessing Officer to pass appropriate order. While passing the order, the Assessing Officer shall keep in mind our finding given hereinabove whereby we have held that the assessee was merely an agent of the DLF and also to consider the decision in the case of Mirza Jaleel Ahmed (supra). In the light of the above direction, ground nos.8 and 9 are allowed for statistical purposes.

17. **GROUNDS 10 AND 11**

Ground nos.10 and 11 i.e., with respect to disallowance of Rs.2,77,09,907/- made for purportedly bogus development and disallowance of Rs.8,41,87,239/- made by the Assessing Officer u/s 40(a)(ia) of the Act, respectively.

17.1. With respect to these grounds, ld. AR before us submitted that he does not wish to press the same. Per contra, ld. DR submitted no objection for not pressing these grounds. In view of the submission of ld. AR and no objection from ld. DR, we dismiss grounds 10 and 11 as not pressed.

18. **GROUND NO.12**

Ground no.12 is with respect to the **disallowance of payments made to landlords and claimants of Rs.18,47,25,000/- for not filing confirmation letters.**

18.1. In this regard, ld. AR has drawn our attention to pages 10 and 11 of the assessment order which reads as under:

> *"6. Disallowance for non-production of confirmations for the payments to various claimants :*
>
> *The assessee firm was requested to furnish the confirmations for the payments made to various claimants. The assessee firm has not furnished the confirmations. The following persons to whom the payments have been made by the assessee firm denied the receipt of the same.*

Sri. Mutyam Reddy & his family members (cash) – Rs.15,53,00,000/-

Sri K. Rathangapani Reddy (cash) - Rs. 50,00,000/-
Sri A. Vittal Reddy (cash) - Rs. 89,50,000/-
Sri P. Narayana Swamy (cash) - Rs. 80,00,000/-

Total : Rs.17,72,50,000/-

Therefore, the assessee firm was requested to produce the confirmations from the above parties. The assessee firm failed to produce any confirmations from the above parties. The A.R stated that it is difficult to produce confirmation letters from the parties.

Similarly, the assessee firm also not furnished-the confirmations for the cash payments made to the following parties.

1	*Parveen Begum*	*9,50,000*
2	*Abdul Salma Begum*	*9,50,000*
3	*Massrath Sultana*	*9,00,000*
4	*Sharifa Begum*	*9,50,000*
5	*Hasina Begum*	*9,00,000*
6	*Syed Gousia Begum*	*9,50,000*
7	*Shajhan Begum*	*9,75,000*
8	*Nusrathunnisa*	*9,00,000*
	Total	*74,75,000*

Therefore, the cash payments of Rs.17,72,50,000/- made by the assessee firm to the parties who have denied the receipt of cash needs to be added to the total income of the assessee. Similarly, the cash payments of Rs.74,75,000/- made by the assessee firm from whom the confirmations have not been filed needs to be added to the total income of the assessee. Hence, the total addition on this count works out to Rs.18,47,25,000I- (Rs.17,72,50,000/- + Rs.74,75,000/-). However, without prejudice to the above, all the above payments i.e. Rs.18,47,25,000/- are disallowed U/s.40A(3) or 40(a)(ia). Hence, to avoid the Double disallowance for same expenditure under different sections, separate addition is not made under this head Further, the cash payments made to the following parties are not disallowed as these parties have admitted the receipt of cash and filed the returns of income admitting these receipts.

Mohd Moinuddin - Rs. 20,00,000
Sri Prabhakar Ráo Rs. 2,07,56,250
Sri G. Yadagiri Rs. 69,18,750
Sri Dilip Kumar Rs. 75,00, 000
Syed Naseer Rs. 75,00,000
Jagat Singh Rs. 2,00,00,000."

18.2. On appeal, the ld.CIT(A) confirmed the addition made by the Assessing Officer at pages 80 and 81 of his order by observing as under :

> *"The sixth issue is regarding non confirmation by various parties to whom payments were made. The AO noted that the sum of Rs. 17,72,50,000 was paid in cash to various parties but no confirmations were filed and also a-sum of Rs.74,75,000 were also made to various parties as brought out in the second table in page 11 of the assessment order. The AO stated that the same have already been disallowed u/s 40A(3) or 40(a)(ia). Therefore, it will tantamount to double addition by again disallowing u/s 37(1). It is noted that the AO has observed that the amounts are disallowable both u/s 37(1) and u/s 40A(3)/40(a)(ia) as applicable and the disallowance can be made only once, which is a fair observation and is upheld. Further, the appellant's contention that the cash payments made to the parties was already part of the seized material and there would no separate need to furnish confirmation letters from the parties is also devoid of merits as the onus is upon the appellant to prove the genuineness of the information appearing in the seized material.*
>
> *The appellant is relying that these documents were found during search and seizure operation and which depicted cash payment and simultaneously disowning that the payments were made by him and trying to transfer the onus of payment to the DLF group which reflects the dichotomy on the part of the appellant. The appellant is stating that it is 'reliably understood that notices were issued to all recipients and the assessment was completed for which no proof was given. The appellant needs to justify the payments and also confirmations to justify the bonafides of the payments it has failed to do so. Accordingly, the contentions of the appellant made during appeal proceedings are rejected."*

18.3. It was submitted that the Assessing Officer had not made any addition in the assessment order as the same was factored while making addition in the hands of the assessee under definite head.

18.4. The ld. AR also filed written submissions in support of his case. The relevant portion of the written submissions pertaining to this issue reads as under :

"The AO has dealt with the following cash payments made by the Appellant at pg.10 and 11 of asst. order:

RECEIPTS AVAILABLE BUT PAYMENTS DENIED BY RECEIPENTS

Sri Mutyam Reddy & his family members		Rs.15,53,00,000
Sri K.Rathangapani Reddy		Rs. 50,00,000
Sri A.Vittal Reddy		Rs. 89,50,000
Sri P.Narayana Swamy		Rs. 80,00,000
	Total	Rs.17,72,50,000

PAYMENTS TO PARTIES WHERE CONFIRMATIONS ARE NOT FILED

Praveen Begum		Rs. 9,50,000
Abdul Salma Begum		Rs. 9,50,000
Massrath Sultana		Rs. 9,00,000
Sharifa Begum		Rs. 9,50,000
Hasina Begum		Rs. 9,00,000
Syed Gousia Begum		Rs. 9,50,000
Shajhan Begum		Rs. 9,75,000
Nusrathunnisa		Rs. 9,00,000
	Total	Rs.74,75,000

46. At the outset, this addition is made on the presumption that it is an expenditure in the hands of the Appellant, and since the Appellant is unable to establish the confirmation of the payment, the same is disallowed. However, no separate addition is made as disallowance of this expenditure was already made either under section 40A(3) or 40a(ia) of the Act.

47. The Appellant respectfully submits that the above payments are not expenditure in its hands as they were paid on behalf of DLF and its group, as pleaded while making submissions in respect of disallowances under section 40A(3) and 40a(ia) of the Act. It is submitted that if it is not an expenditure in the hands of the Appellant, then the question of adding them separately for want of confirmation letters does not arise.

48. Without prejudice to the above submission made above, the Appellant submits that receipts issued by Mr.Mutyam Reddy & his family and so also the other three persons for the cash payments made to them, for the amounts stated therein, were found on the date of search i.e. 17.10.2007 and was marked as Annexure A/DSKR/SR/03 and the same are placed at pages 410 to 431 of PB – Vol -2. It is submitted that the statutory presumption as per section 292C is that the above receipts have to be taken to be correct and the amount stated therein should be taken to have been paid. Once the above evidence was available, the AO as well as ld. CIT(A) were incorrect in turning a blind eye to this evidence, and then calling upon the Appellant to establish the payment. It is submitted that the action of the AO and so also the ld. CIT(A) is contrary to the provisions of section 292C of the Act and cannot be sustained.

49. In so far as the payments of Rs.74,75,000 to various parties listed above is concerned, the Appellant adopts the submission made in para 47 above. Without prejudice to the above, the receipts issued by the said persons along with their identity were filed before AO and ld.CIT(A). The same are placed at pages 390 to 397 of PB – Vol-2. Further, receipts along with their identities were filed along with submission filed before ld.CIT(A) and is filed as PB- Vol-3 before the Hon'ble ITAT.

In view of the above, it is humbly prayed that no addition can be made of Rs.18,47,25,000 under any circumstances."

18.5. On the other hand, the ld. DR submitted that the addition under this head was discussed in the assessment order but not addition was made in the computation of income for the reasons that the same have already been added back either u/s 40A(3) or 40(a)(ia) of the Act.

18.6. We have heard the rival submissions and perused the material available on record. From the perusal of the record, it is abundantly clear that the addition as per page 10 of the order passed by the Assessing Officer has been excluded from the computation in the order of Assessing Officer passed u/s 143(3) of the Act. No separate additions were made by the Assessing Officer in this regard, as the Assessing Officer had already

factored this disallowance under section 40A(3) of the Act. Therefore, no application per se is required. We had already held that the expenditure incurred by the assessee was done on behalf of the DLF, being its agent, therefore, the disallowance, if any, was required to be made in the hands of DLF only. As we have remanded back the issue of 40A(3) to the file of the Assessing Officer, therefore, we also remand back this issue to the file of Assessing Officer to pass appropriate order in the light of the observation made hereinabove and also the other part of the order. Thus, ground no.12 is allowed for statistical purposes.

19. **GROUND NO.13**

Ground no.13 is with respect to the **unrecorded cash payments of Rs. 13,81,00,000/- made to Sri V. Ramchander Rao and Radha Realty Corporation (India) Pvt. Ltd.** In this regard, ld. AR has drawn our attention to pages 11 to 13 of the assessment order which reads as under :

> *"7. Unrecorded cash payments made to Sri V. Ramchander Rao and Radha Realty Corporation (India) Pvt. Ltd.*
>
> *It is seen from the page no.147 to 154 of annexure A/VRR/RES/1 which was found and seized from the residence of Sri Ramchander Rao and as per annexure A/RRCPL/05 (page no.68 to 74) which were found and seized from the office premises of Radha Realty, an MOU dated 03-08-2007 was entered between the assessee Ltd., with Radha Realty Corporation Pvt. Ltd. and Ramchander Rao for transfer of their rights in the land for Rs.68.50 crores. However, the amounts as per sale deed received shown by Ramchander Rao and his group and Radha Realty are only Rs.3.30 crores and Rs.51.39 crores respectively. Therefore, it is obvious that the balance amount is paid in cash to these parties and not recorded in the books. It is also noticed that the assessee firm paid cash of Rs.8.70 crores to Ramchander Rao for which the assessee has taken the cash receipts from the Ramchander Rao as per pages 2 to 5 of annexure A/DSKR/SR/03 found in the assessee office premises. In this connection, the assessee was requested vide notice u/s 142(1) dt.30.10.2009 to explain why the difference amount of Rs.13.81 crores (Rs.68.50 crores (-) Rs.54.69 crores) between the price mentioned in the MOU and the receipts as per sale deed should not be added to the total*

income of the assessee as unexplained expenditure in purchase of lands. The AR of the assessee in his letter dt.26.11.2009 has submitted that the firm paid only cheque amount to the above parties.

19.1. Thereafter, Assessing Officer rejected the submissions of the assessee and he mentioned the reasons for not accepting the submission at pages 12 and 13 of his order and thereafter, he added the difference amount of Rs.13,81,00,000/- to the total income of the assessee.

19.2. On appeal, the ld.CIT(A) confirmed the addition made by the Assessing Officer at pages 81 to 83 of his order by observing as under :

"The seventh issue is regarding unrecorded cash payments of Rs.13,81,00,000/- being made to Sri V. Ramchander Rao, M/s. Radha Realty Corporation(India) Pvt. Ltd. The AO noted that on the basis of the documents found seized during the search that the agreement were recorded for a total sale consideration of Rs.68.50 crores. This document is dated 28-07.2007 between Sri V Ramchander Rao (VRR for short) and various others, V. Ramchander rao was holding GPA of the first part and Radha Realty Corp India Pvt. Ltd. being the second party and MIs Mali Florex Limited and the appellant being the third party. The first and the second party transferred the rights to the third party for a total consideration of Rs.6850 crores. This was pertaining to the land of Ac 41-35 guntas in Rajendranagar Mandal, R.R. District. This document, as already stated, was entered on 28.07.2007 and subsequently on 20.08.2007, Sri VRR and Demi Realtors) the appellant got into an agreement for the same land and a deposit of Rs. 8,50,00,000/- was agreed and the sum of Rs. 2,0000,000/- was given an advance Needless to state Sri VRR was the GPA holder for the other land owners. The said amount was paid in cash as can be seen from the repayment receipt submitted by the appellant which is reproduced as under:

Xxxxxxx

It is important to note that the appellant had not proved the source of these amounts in the books of accounts and they have been paid in cash. The Assessing Officer is correct in holding that the payments in books is only to the tune of Rs.54.69 crore in the books that the balance payment was in cash through unaccounted sources. The Assessing Officer has considered the chain of events and noted that

considering the documents on record-arid the history of the transactions between. Sri VRR afi1 MIs. Radha Realty Corporation and the provisions of Section 132(4A) and 292C, the documents so found are correct and it is onus on the appellant to prove the same otherwise.

The appellant during the course of appeal proceedings submitted that certain specific performance suits were filed by Sri Balashovry & others before the Court of First Addl. District Judge, Rangareddy District in OS No.928 to 931 of 2007 and the matter was pending. Citing the same, the appellant contended that as the matter was pending in the Court and Sri V. Ramachander Rao has not cleared the litigation, Rs. 13.81 crores was not paid to him and retained with the appellant. It is seen that the appellant has not brought out any specific issue with regard to the impugned transaction with the suits filed. The issue of appellant entering MoU with Sri VRR was not observed from the copy of suit submitted by the appellant along with the written submissions. The onus of proof lies upon the appellant as regards the withholding of Rs.13.81 crores and its link to the suits filed and also the payment made of Rs. 8.5 crores in cash through accounted sources. It seems that the sum of Rs. 13.81 crores finally paid on the sides through unaccounted sources as can be seen from the transaction of Rs.8.50 crores in cash. Therefore, the appellant failed to discharge its onus and the burden of proof is not on the Assessing Officer. In view of the same, the conclusion of the AO that the sum of Rs,13,8100,000/- has been paid in cash through unaccounted sources and concluding the same as unexplained expenditure is upheld. The ground no. 7 is dismissed accordingly."

19.3. In this regard, assessee has drawn our attention to the order of the Tribunal passed in ITA 914/Hyd/2011 in case of V. Ramchandra Rao Vs. DCIT (at page 1124 to 1176 of the paper book Volume – 5, @ Paras 70 to 74 at page 1163), wherein the Tribunal held that there is no evidence of payment of cash of Rs.13.81 crores and deleted the addition made therein.

19.4. The ld. AR also filed written submissions in support of his case. The relevant portion of the written submissions pertaining to this issue reads as under :

"This issue emanated from the search in the hands of Sri V.Ramchander Rao wherein an unsigned MOU dated 03.08.2007 was found and seized. The draft MOU between the Appellant, M/s Mali Florex Ltd., M/s Radha Realtors and Sri V.Ramachander Rao envisages payment

of Rs.68.50 crores to Sri V.Ramachander Rao subject to the conditions mentioned therein. According to the Assessing Officer, the Appellant recorded payment of only Rs.54.69 crores to Sri V.Ramachander Rao, and therefore, the balance of Rs.13.81 crores must have been paid by Appellant in cash. The Assessing Officer is of the view that the said amount was paid outside the books of account and accordingly treated the same as income u/s 69 of the Act. Accordingly, the Assessing officer made an addition of Rs.13.81 crores in the hands of the Appellant. The ld. CIT(A) upheld the addition made by the AO for the same reasons.

51. It is submitted that the very same issue is dealt by the ld. CIT(A) and Hon'ble ITAT in the case of Sri V.Ramchandra Rao in an filed by the Revenue in ITA.No.914/Hyd/2011. The Hon'ble ITAT while adjudicating the Revenue's appeal held (a copy of the order is placed at pages 1124 to 1176 of PB – Vol-5; relevant para 74 @pg.1168) as under:

74. We heard the parties and perused the material available on record including the impugned orders of the lower authorities. As can be seen from the materials on record, the addition of Rs.13.81 crores was made by the Assessing Officer only relying upon the draft MOU which is an unsigned one. There is no other corroborative evidence brought on record either as a result of search or enquiry made by the Assessing Officer, which could establish the fact that the contents of the draft MOU were true and the MOU was in fact acted upon. Therefore, in the absence of any such evidence, the MOU is merely a dumb document having no evidentiary value and hence cannot be made the basis for making an addition. That apart, as has been elaborately discussed by the CIT(A), even assuming the draft MOU to be correct, there is neither mention of the consideration paid nor mode of such payment. Moreover, when as per the draft MOU, the consideration has to be paid both to the assessee and M/s. Radha Realty Corporation Ltd., the entire payment being the differential amount could not have been assessed in the hands of the assessee alone. It is also a fact to take note of, that the final sale deed dated 22.8.2007 in favour of DLF with regard to sale of land in dispute, does not mention about any payment being made to the assessee or his nominees. That being the case, it cannot be said the assessee has received the amount of Rs.13.81 crores in cash towards the sale of land merely on the basis of the draft MOU. In this view of the matter, we find no infirmity in the reasons discussed by the CIT(A) in the impugned order while deleting the impugned addition made by the Assessing Officer. We accordingly uphold the same, rejecting the grounds of the Revenue in this appeal.

> *52. It is submitted that the above issue is squarely covered by the order of Hon'ble ITAT in the hands of Sri V.Ramchandra Rao. It is submitted that the addition in the hands of the Appellant cannot be sustained for the same reasons as held in the case of Sri V.Ramchandra Rao."*

19.5. Per contra, ld. DR submitted that addition was made based on incriminating material seized from residence of Ramchander Rao vide Annexure A/VRR/RES/1 pages 147-154 and from office of Radha Realty Corporation vide Annexure A/RRCP L/05 pages 68-74. ld. DR further submitted that MOU dated 03.08.2007 with Radha Realty and V. Ramchander Rao, is for Rs 68.50 crores. However, Sale deed shows only Rs 3.30 cr + 51.39 cr = Rs 54.69 crores and hence, the difference is Rs 13.81 crores. He further submitted that as per Sec 132(4A) of IT Act, the MOU document found and seized in the search premises is presumed to be true and correct. In this regard, ld. DR relied on the case of Smt. Kesari Bai Vs ITO, 32 ITD 1, ITAT Hyd.

19.6. Heard the rival contentions and perused the material on record including the order of Tribunal passed in ITA No.914/Hyd/2011 dt.22.11.2013. The Tribunal while dealing with the same addition on the basis of same incriminating material in the hands of V. Ramachandra Rao in Paras 73 and 74 had held as under :

> *"73. The CIT(A), on consideration of the submissions of the assessee and on going through the facts and circumstances on record, and particularly examining the draft MOU, seized from the premises of the MOU and M/s. Radha Realty Corporation Ltd., found that the said draft MOU is made between the assessee and his nominee as first party and M/s. Radha Realty Corporation Ltd. As second party and M/s. Mali Forex Ltd and M/s. Demi Realtors as third party, and this draft MOU is in respect Of land admeasuring 41 acres and 34 guntas in Survey No.262 to 274 Situated at Puppalguda Village. As per the draft MOU, the first party and Second party have agreed to transfer all their existing rights and claims in The scheduled property to the third party for a total consideration of Rs.68.50 crores. However, the details about the nature of payment and Other particulars*

have been left blank. He further noted that the draft MOU Also was not signed by any of the parties. On considering the aforesaid Fact, the CIT(A) accepted the assessee's contention that the draft MOU Was sent to him by Ravindranath Reddy for his perusal only, and the Assessee is in no way accountable with regard to the contents of the draft MOU. The CIT(A) further taking note of the fact that though initially the Assessee and its nominees entered into an agreement with Ravindranath Reddy on 5.11.2005 for a consideration of Rs.21 crores, subject to Fulfillment of certain conditions with regard to the settlement of disputes But since the conditions could not be fulfilled, the agreement could not be Put through. Further, the sale deed dated 22.8.2007 in favour of DLF Makes it clear that payments were made directly by DLF to various persons, who were signatories to the sale deed and the assessee is not a Party to that. He further noted that there is no clarity in unsigned draft MOU with regard to the share of the assessee and his nominees. As the Draft MOU speaks of the total consideration being payable to both the Parties of the first and second part. In these circumstances, it is not Correct to assess the total difference in the hands of the assessee, when M/s. Radha Realty Corporation Ltd. Is also a party to such consideration. The CIT(A) held that the draft MOU found at the time of search, being an Unsigned one, can at best be considered as a dumb document and cannot be relied upon for the purpose of making any addition. So far as the Allegation of the Assessing Officer that the assessee has received cash Payment of Rs.8.5 crores from Demi Realtors as per seized receipts is Concerned, the CIT(A) held that the view of the Assessing Officer is not Correct as D.S.Karunakar Reddy, partner of M/s. Demi Realtor, though Acknowledged payment of Rs.8.5 crores to the assessee, at the same Time, he also acknowledged the receipt of Rs.8.5 crores from the assessee In his sworn statement. The CIT(A) further observed that the Assessing Officer has also not brought on record any evidence to indicate that any Cash payment was made to the assessee. He further noted the fact that Even during the course of search conducted at different places, connected With the land transactions, no material was found indicating such cash Payment to the assessee. He therefore, came to the conclusion that only. On the basis of an unsigned MOU, without any other independent Corroborative evidence, to substantiate such fact, no addition can be made. Based on presumptions only. For these reasons, the CIT(A) deleted the Addition of Rs.13.81 crores made by the Assessing Officer, by holding that no such addition can be made basing on unsigned MOU alone, which has No evidentiary value.

74. We heard the parties and perused the material available on record including the impugned orders of the lower authorities. As can be seen from the materials on record, the addition of Rs.13.81 crores was made by the Assessing Officer only relying upon the draft MOU which is an unsigned one. There is no other corroborative evidence brought on record either as a result of search or enquiry made by the Assessing Officer, which could establish the fact that the contents of the draft MOU were true and the MOU was in fact acted upon. Therefore, in the absence of any such evidence, the MOU is merely a dumb document having no evidentiary value and hence cannot be made the basis for making an addition. That apart, as has been

elaborately discussed by the CIT(A), even assuming the draft MOU to be correct, there is neither mention of the consideration paid nor mode of such payment. Moreover, when as per the draft MOU, the consideration has to be paid both to the assessee and M/s. Radha Realty Corporation Ltd., the entire payment being the differential amount could not have been assessed in the hands of the assessee alone. It is also a fact to take note of, that the final sale deed dated 22.8.2007 in favour of DLF with regard to sale of land in dispute, does not mention about any payment being made to the assessee or his nominees. That being the case, it cannot be said the assessee has received the amount of Rs.13.81 crores in cash towards the sale of land merely on the basis of the draft MOU. In this view of the matter, we find no infirmity in the reasons discussed by the CIT(A) in the impugned order while deleting the impugned addition made by the Assessing Officer. We accordingly uphold the same, rejecting the grounds of the Revenue in this appeal."

19.7 As the ground raised before us is based on the same incriminating material which were already considered by the co-ordinate Bench of the Tribunal in the case of Shri V. Ramchandra Rao, the co-ordinate Bench of the Tribunal after considering the facts and circumstances of the case had held that that the additions are not sustainable in the case of Shri V. Ramchandra Rao. Therefore, respectfully following the decision of the co-ordinate Bench of the Tribunal in similar facts dealing with same issue and material, we hereby delete the addition .In the result the ground no.13 raised by the assessee is allowed.

20. **GROUND NO.14**

This ground is with respect to **addition of Rs.2 crores alleged to have been paid to Mr. Mirza Iqbal Ahmed and others.** In this regard, ld. AR has drawn our attention pages 13 and 14 of the order of Assessing Officer, which reads as under :

"8. Payments made to Mirza Iqbal Ahmed and others :

As per page no.93 to 95 of annexure AIDSI(RJSR/07 reveals that-the assessee firm has paid two cheques of RS.60 lakhs and Rs.2 crores as per agreement dated 26-8-2007 with Mirza Iqbal Ahmed and others in respect of the lands purchased by the assessee firm which are sold to the DIP Company. It is seen that the payment of Rs.2 crores paid under this agreement to the above parties is not appearing in the assessee's books of account. In this connection, the assessee firm was requested vide notice U/s.142(1) dated 19-11-2009 to explain why the above amount of Rs.2,00,00,000/- should not be added to the total income of the assessee firm. The A.R of the assessee in his letter dated 26-11-2009 has submitted that two post dated cheques have been issued but payments are not 19.made due to disputes.

The submissions of the assessee are considered and the same are not acceptable for the following reasons:

Out of the two cheques the cheque for Rs.60,00,000/- is already encashed by the Mirza Iqbal Ahmed and others. It is claimed as expenditure by the assessee and the other party also offered the above amount for tax. It is not clear whether the other cheque payment was made or whether it is squared up by payment of cash to the above parties. The ass not produced the cheque copy of Rs.2 crores which is issued but no encashed. Considering the above reasons the amount of Rs.2,00,00,000/- is added to the total income of the assessee.

20.1. On appeal, the ld.CIT(A) upheld the addition made by the Assessing Officer at pages 84 and 85 of his order by observing as under :

"The eighth issue is regarding the payment of Rs.2,00,00,000/- to Mr. Mirza Iqbal Ahmed and others by the appellant firm towards purchase of land vide agreement of sale dated 26.08.2007 as per Page no.93 to 95 of annexure A/DSKR/SR/07. As per the said agreement, the appellant has issued two postdated cheques of Rs.60,00,000/- and Rs.2,00,00,000/- respectively. The AO observed that the cheque of Rs.60,00,000/- has been en-cashed by the sellers. Regarding the cheque of Rs.2,00,00,000/-, the appellant submitted during the assessment proceedings that the payment was not done. However, the Assessing Officer noted that the appellant failed to submit copy of the cheque stated to have not been encashed by seller and no other evidence was submitted regarding non-payment-of the amount of Rs.2,00,00,000/- by the appellant firm. The

appellant failed to produce any other evidence or confirmation from the seller regarding nonpayment of Rs.2,00,00,000/- and considering the modus operandi followed by the appellant, the said sum could well have been paid in cash as well.

Further, the appellant, during the appeal proceedings, submitted that the company M/s. Radha Realtors Pvt. Ltd. field a suit before the fist. judge, R.R. District vide O.S. 971/2007 and that the suit was still pending and the appellant failed to prove that it did not allow to encash the cheque of Rs.2,00,00,000/-. The appellant has not given the date of cheque being of a subsequent date for it not to be encashed till the legal compliance is made. It seems that the appellant wanted to settle the same in unaccounted cash and therefore took the cheque back from the recipient.

In this regard, the appellant filed summons issued by the Hon'ble Court of District Judge, R.R District but did not bring out any material fact that the impugned land was under the suit and any other relevant submission to show that the issue of non-payment of the amount has been made part of the said Suit. It is important to note that the burden of proof lies with the appellant as regards the stop payment of Rs.2,0000,000/- and merely citing a summon regarding the suit before the Court without establishing the connection with the impugned payment will not be enough to justify its contention. Further, even during the appeal proceedings, the appellant failed to furnish a copy of the cheque or confirmation letter from the seller as held by the Assessing Officer in the order. Non submission of the same implies that the payment was made in cash and also it is likely that the appellant did not have accounted payments and therefore would have issued the cheque for the sake of it and the payment would have been made in cash. Therefore, the payment of Rs.2,00,00,000/- remains unaccounted and accordingly, the addition made in this regard by the Assessing Officer is hereby upheld. In view of the same, the ground no. 8 is dismissed.

20.2 The submission of the assessee before us is that there is no evidence showing that the assessee has paid any amount in cash to Mr. Mirza Iqbal Ahmed and others. It was submitted that during the assessment proceedings and appellate proceedings assessee has provided sufficient details in the form of agreement dt.26.08.2007, copy of the suit filed by M/s.Radha Realtors to prove that said Mirza Iqbal Ahmed and others have not settled the dispute with M/s Radha Realtors and further, the Revenue has failed to prove that the assessee has paid Rs.2 crores in cash.

In fact, the issue was raised against Mr. Mirza Iqbal Ahmed in ITA No.945/Hyd/2011 and the Tribunal had adjudicated this issue and passed order on 31.05.2012 observing as under :

> *"We have heard both the parties on this issue. In our opinion, there is a reasonable cause for raising additional ground by the assessee before us for the first time. Considering the argument of the AR, it is appropriate to admit the additional ground. However, the lower authorities have no occasion to go into the merit of the additional ground raised by the assessee before us. In all fairness it is appropriate to set aside this issue to the file of the Assessing Officer to examine the additional ground in the light of the arguments placed by the assessee's counsel before us. Accordingly, we remit back the additional ground raised before us to the file of the Assessing Officer for due consideration. He will examine the same in the light of the arguments made by the assessee's counsel before us and in the light of the judgment of Supreme Court in the case of B.C. Srinivasa Setty (cited supra) and also the other judgments cited by the AR. Since the additional ground raised by the assessees goes to the root of the matter, at this stage, we refrain ourselves from adjudicating any other grounds raised by the assessee or by the Revenue.*

20.3 The relevant portion of the written submissions filed by the assessee pertaining to this issue reads as under :

> *"The family of Mr.Mirza Iqbal Ahmed entered into agreement dated 26.08.2007 with the Appellant (Pg.237 to 239 of PB – Vol-1). The Agreement records the fact that Mr.Mirza Iqbal Ahmed and others entered into a prior agreement with Mr.Ravindranath Reddy with respect to Ac.5.06Gts which was to be sold to the Appellant/DLF, and received consideration of Rs.65,00,000. As per the terms of the Agreement dated 26.08.2007, Mr.Mirza Iqbal Ahmed & Ors have to settle the claims that may arise with Mr.Ravindranath Reddy of M/s. Radha Realtors or others within 45 days from the date of agreement. For the said purpose the Appellant issued two post-dated cheques viz., (i) Cheque bearing 042369 dated 15.09.2007 for Rs.60 lakhs, and (ii) Cheque bearing 203755 dated 24.10.2007 for Rs.2 crores. Since the time frame was 45 days and the first of the cheques for Rs.60 lakhs fell within that period, the Appellant honoured the said payment. However, Mr.Mirza Iqbal Ahmed & Ors failed to settle the disputes with Mr.Ravindranath Reddy of M/s. Radha Realtors with in the time frame of 45 days. Contrary to what was agreed to in the Agreement dated 26.08.2007, the Appellant received summons in Suit (OS.No.971 of 2007) from Hon'ble Dist. Judge, Ranga Reddy Dist (page No.464 of paper book). Therefore, the Appellant has asked Mr.Mirza Iqbal Ahmed & Ors to not to present the cheque for Rs.2 crores for payment, as the terms of the Agreement dated 26.08.2007 were not complied with.*

54. The Assessing Officer made the addition of Rs.2 crores on the alleged ground that the payments were made to Mirza Iqbal and others in cash. According to the Assessing Officer, at pages No.93 to 95 of seized documents A/DSKR/SR07, two cheques have been issued one for Rs.60 lakhs and another for Rs.2 crores as per the agreement dated 26.8.2007 (pages No.237 to 239 of paper book) with Mirza Iqbal & Others. According to the Assessing Officer, the amount of Rs.2 crores paid as per the agreement is not appearing in the books of the appellant herein.

55. The Appellant submitted the facts narrated at para 53 before the AO and also submitted the bank account copy in proof of payment of only Rs.60 lakhs (pages No.451 to 463 of PB- Vol-2). The Appellant submitted to the AO that the other payment of Rs.2 crores was not paid as Mr.Mirza Iqbal Ahmed & Ors have not settled the litigation. However, the AO is of the view that the Appellant might have paid cash of Rs.2 crores to Mirza Iqbal Ahmed & Ors.

56. The Appellant humbly submits that the payment of Rs.2 crores was not paid to Mr.Mirza Iqbal Ahmed & Ors as their litigation with Ravindranath Reddy of M/s. Radha Realtors was not settled. It is a search case and there is no trace of evidence that the Appellant had paid the said amount in cash. The Appellant submits that it received summons in the suit filed a suit before the Dist. Judge, RR Dist numbered as OS 971 of 2007 (page No.464 of paper book) and therefore the payment of Rs.2 crores was not made. It is submitted that the AO is expecting the Appellant to prove the negative. It is submitted that there cannot be evidence for establishing non-payment of Rs.2 crores. On the contrary, no evidence is found in the course of search with respect to alleged payment of Rs.2 crores, nor the AO made efforts to verify the same with Mr.Mirza Iqbal Ahmed and others. It is submitted that the burden of proof to tax an income is always on the Revenue. In the present case, the AO assumed that the Appellant had paid, but had completely failed to examine other attended facts which were placed before him. The ld. CIT(A) also blindly upheld the order of the AO. It is respectfully submitted that this is a search case and in the absence of seized material indicating payment of Rs.2 crores, the addition could not have been made.

It is prayed that the addition of Rs.2 crores may kindly be deleted."

20.4. Per contra, ld. DR submitted that based on incriminating material annexure A/DSKR/SR/07 pages 93-95, two cheques of Rs.2 crores and 60 lakh paid by assessee to Mirza Iqbal for purchase of land were not reflected in assessee's books of accounts. Further, Rs.60 lakhs were already encashed by Mr.

Mirza Iqbal Ahmed and Rs.2 Crore cheque issued was neither encashed nor produced.

20.5 We have heard the rival submissions and perused the material on record. The Assessing Officer had made the addition in the hands of the assessee for the cheque issued by the assessee pursuant to the agreement entered by the assessee on 26.08.2007. However, the said cheque issued by the assessee for Rs.2 crore was not encashed by the said Mr. Mirza Iqbal Ahmed. The Assessing Officer on the basis of surmises and presumptions had made the addition in the hands of the assessee on the pretext that the assessee might have paid the cheque amount in cash. In our view, for the purpose of making the addition, the Assessing Officer / Revenue should bring on record, the cogent evidence showing the payment was made in cash. Nothing has been brought on record and also to our notice, that the amount of Rs.2 crore was made in cash. Undoubtedly, as per the agreement dt.26.08.2007, the said Mr. Mirza Iqbal Ahmed has to settle the disputes with N. Ravindranath Reddy of M/s. Radha Realtors within a period of 45 days. As the party failed to resolve the disputes, therefore, the amount of Rs.2 crore was not paid by the assessee to Mr. Mirza Iqbal Ahmed. However, before that the other cheque given by the assessee for an amount of Rs.60 lakhs was encashed by Mr. Mirza Iqbal Ahmed. As per the case of the Assessing Officer, Mr. Mirza Iqbal Ahmed had admitted that the amount of Rs.60 lakhs received in cash vide cheque No.042369 dated 15.09.2007 drawn on UTI Bank, Jubliee Hills Branch, Hyderabad in the return of income. There is no evidence on record to prove that the assessee had paid an amount of Rs.2 crore in cash to Mr. Mirza Iqbal Ahmed in view of cheque of Rs.2 crore. In the absence of cogent and corroborative evidence, no addition can be made on

the basis of conjecture and surmises. In view of the above foregoing reasons, this ground of the assessee is allowed.

21. **GROUND NOS.15 AND 16**

Both these grounds are with respect to **disallowance of land cost amounting to Rs.45,90,60,000/- debited u/s 40(a)(ia)** of the Act. In this regard, ld. AR has drawn our attention to pages 14 to 18 of the order of Assessing Officer which reads as under :

> *".....*
> *.....*
> *.....*
> *In this case the assessee company made payments. in kind namely 85 per cent of the fist caught are handed over to the non-resident company towards hire charges, fuel and maintenance charges. There is no cash or cheque payment to the non-resident company and therefore the contention of the assessee was the provisions of TDS are not applicable as there is no payment in cash or cheque to the non-resident company. The Tribunal held that, payment in kind by way of handing over of 85% of fish caught amounts to payment to the non-resident by any other mode which is covered provisions of section 195 and therefore the TDS provisions are applicable even though the payment is made in kind. 'The AP 'High Court in the above case upheld the views of the Tribunal on this issue.*
>
> *The provisions of Section 194H also clearly mentions that TDS is liable to be deducted on the commission or brokerage at the time of credit of such income to the account of the payee or-at the timer of payment of such income in cash or by the issue of a cheque or draft or by any other mode which ever is earliest, TDS should be deducted The decision of the AP High Court in the case of Kanchan Ganga Sea Foods Ltd Vs Commissioner of Income Tax squarely applies to the facts of the case as Section 194H dearly mentions, payment by any other mode is covered by the provisions of TDS.*
>
> *Considering the facts and circumstances of the case and the provisions of Section.194H, Sec 40(a)(ia) and the decision of AP High Court in the above case, the land cost debited by the assessee of Rs.45,90,60,000/- is disallowed under Section 40(a)(ia) for non-deduction of TDS. This amount is added to the total income of the assessee."*

21.1. On appeal, ld.CIT(A), upheld the addition made by the Assessing Officer at pages 85 to 90 of his order by observing as under :

“The-ninth addition is regarding the disallowance -u-/s. 40(a)(1a) for making commission payments in kind. The AO has brought out a working in the page 14 of the assessment order that a land of Ac 10-37.5 gts has been transferred to S. Narayan Reddy (Director of M/s. Mali Florex Ltd.), Karunakar Reddy (partner of the appellant firm), B. Mukund Rao and K. Srinivas, who are real estate brokers. The Assessing Officer brought out the submissions during the course of scrutiny proceedings of the partner of the firm, Sri D.S. Karunakar Reddy, which is as under:

"The said property was left only for the purpose of distribution among the partners to the deal, who have either incurred expenditure on behalf of DLF or rendered services for completion of the project."
Accordingly, the Assessing Officer concluded that the lands were transferred to the above people as the commission in kind for the services rendered by them in facilitating the land transactions. The appellant's contentions that the lands were not transferred by it but only by land owners is also devoid of merits, as the appellant firm became the legal owner of the lands vide the Lok Adalat Order mentioned supra. The Assessing Officer noted that the lands transferred to the persons for no consideration or meager consideration on account of the services rendered by them would fall under the words "any other mode" as mentioned in the provisions of Sec. 194H of the Income Tax Act. The contents of Sec. 194H are as under:

"Commission or brokerage

194H. Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, 'whichever is earlier, deduct income-tax thereon at the rate of [ten] percent "

The Assessing Officer accordingly held that the appellant is responsible to deduct TDS on the value of lands transferred to the said people as commission / brokerage. The Assessing PWcer, has, also placed reliance on the. judgment of Hon'ble High Court of Andhra Pradesh in the case of Kanchan Ganga Sea foods Ltd. vs. CIT in concluding the commission paid in kind also attracts the provisions of TDS. Regarding the quantum, the AO considered the average purchase rate of Rs.4.20 Crores per acre by the appellant itself for the procurement of the total land and has used the average purchase price to arrive at the value of lands transferred as commission in kind, which was Rs45,90,60,000/- Rs.4.20 crores x 10.93 acres). It is also important to note that these lands were transferred in kind and the same should also have been accounted as income of the appellant and the same should have been considered as market value and the tax should have been paid by the appellant and this should have been called distribution of assets of the firm to the various interested parties for no consideration or meager consideration. However it would

have the same effect on the quantum of taxation on income or equivalent disallowance.

The appellant submitted during the appeal proceedings that the property was transferred for a consideration of Rs. 1 lakh only and that the property was sold by a number of parties and not the appellant alone. This submission of the appellant is not correct as it is seen from the agreement of sale cum irrevocable---power of attorney dated 22.082007 that—the consideration of Rs. 1,00,000/- was mentioned as only nominal and the payments were already made as per the Lok Adalat Order No. 481/2007. Therefore the consideration of Rs.1,00,000/- in no way considered as consideration. Further the ownership of the property has been held in the name of the appellant firm vide the said Lok Adalat Order.

The second argument of the appellant is regarding the quantum of disallowance. The total land of Ac 41-34 gts, the appellant got vide the Lok Adalat Order cited supra does not specify different rates for different pieces of land. The entire land was relinquished in favor of the appellant on payments agreed to be made to various stakeholders in the land. Therefore, the appellant cannot bring out the deficiencies pertaining to a part of land at a later stage.. The appellant contended that out of the said land of Ac 10-37.5 gts, lands of Ac 1-32 gts Ac 0-20gts and Ac 0-37.5 gts were sold to different parties and share of appellant was Rs.45,77,083/-. The appellant further relied upon the Valuation report of the DVO, who has valued the extent of Ac 6- 18 gts at a value of Rs.1,06,42500/- and contended that the disallowance should be limited to Rs. 1,52,19,583/-.

It is seen that in the assessment order the AO has brought out an explicit fact in the para 'no. 10 in page no. 18 where the AO has noted that the lands transferred to Sri S. Narayana Reddy and Sri D.S. Karunakar Reddy were subsequently sold. The AO noted that on 22.04.2008-the land of 3 acres was sold for a consideration of Rs. 11 crores and this was subsequent date of search and therefore, as a factum of Rs.4.20 crores per acre is an established fact not disputed by the appellant. It is very much possible that the subsequent land deals were undertaken with accounted cheque and unaccounted cash. Therefore, the claim of the appellant in the submissions regarding the DVO report etc., is not correct as the land of certain parcel has been sold immediately subsequently after the transfer and this observation has not been negated by the appellant. This is a hard evidence on record which is not been contested by the appellant and to say that the land is not physically traceable or in low lying area then how come the said transferees sold the said land subsequently and also the said parties have accounted the same as income. In view of this the argument of the appellant that the valuation of land is only Rs.1,52,19583/- is a farce when the 3 acre land itself fetched the amount of Rs. 11 crores as a documented cheque transaction. The AO has applied the average rate which is a fair proposition and to the extent of the sums which were transferred to unrelated parties and related parties for the services rendered as stated by the appellant itself. This implies as per the judgment cited by the AO the TDS has to be deducted

as per market value of land and therefore the AO has correctly held that the same is disallowable u/s. 40(a)(ia).

It is important to note that the cost of the land has been debited to the P&L account and out of this; the same has been transferred to these people for a meager consideration. Thus the land cost is a debit which is equivalent to the commission paid and thus the commission would attract the provisions of TDS and non-deduction off the same would be liable for disallowance u/s.40(a)(ia). Needless to state that the appellant again has been an instrument in the evading of taxes and concealment of income by the four persons to whom the land was transferred as commission as no trail has been laid out through the deduction of taxes and the appellant has also not brought out otherwise that such income has been offered for taxation.

Thus the appellant did not bring out as to why the provisions of TDS are not applicb1 to the said transactions. The payments made in kind such as transfer of asset in the present case to the interested parties/brokers and other persons whose services were supposedly utilized in facilitating land transactions are to be deducted within the ambit of TDS provisions as per the Income Tax Act and further no other situation has been brought out by the appellant. It is also important to note that in spite of so many years the appellant has not brought out anything on record to indicate anything rebutting the contention of the Assessing Officer and the TDS provisions regarding commission paid in kind and in view of the same the addition is upheld accordingly and the ground no. 9 is dismissed.

21.2 Before us ld. AR reiterated the submissions made before the ld.CIT(A) and further submitted that the assessee did not sell 3 acres of land as alleged for Rs.11 crores. The ld.CIT(A) totally misdirected himself and that document no.8377/2007 deals with left over land of Ac.10 and 13.5 gts, out of this, small extents of lands were sold to Belmont Estates, T. Anjan Kumar and Srinivas on 12.09.2007, 29.09.2007 and 29.09.2007. The remaining land could not be sold which is clear from DVO report Further ld. AR submitted that the alleged sale of 3 acres of land was just only an imagination of ld.CIT(A) and in fact no such sale was made by the assessee. No evidence was brought on record by Assessing Officer / ld.CIT(A).

21.3 The relevant portion of the written submissions filed by the assessee before us pertaining to this issue reads as under :

> *"57. The AO and ld.CIT(A) held that transfer of land of 10 acres and 37.5 guntas by the Appellant to Sri S. Narayana Reddy and three others is payment of commission in kind for the services rendered by the said persons. The AO/ld.CIT(A) are of the view that the above said land was transferred as consideration for the services rendered by Sri S. Narayana Reddy and others and this might represent the amount paid as commission on which tax is deductible at source. As the Appellant did not deduct tax at source, the AO disallowed the alleged commission payment of Rs.45,90,60,000 by invoking provisions of Sec.40(a)(ia) of the I.T.Act. The ld. CIT(A) upheld the order of the AO.*
>
> *58. The Appellant respectfully submits that the land of 10 acres and 37.5guntas was transferred to Sri S.Narayana Reddy, Sri D.S.Karunakar Reddy, Sri K.Srinivasulu and Sri B.Mukund Rao by way of an Agreement of Sale cum Irrevocable General Power of Attorney dated 23.10.2007 (pages No.207 to 235 of PB- Vol-1) by the landlords, claimants, Appellant herein and Sri V. Ramchander Rao and others, for a consideration of Rs.1 lakh. It is respectfully submitted that the said transfer cannot be considered as a payment of commission as held by the AO and ld.CIT(A), as it is a sale. In this regard, the Appellant relies on the order of the Hon'ble ITAT in the case of Sri S.Narayana Reddy in ITA.Nos.291&337/Hyd/2012 dated 29.11.2013 (Pgs.632 to 647 of PB-Vol-2). Sri S.Narayana Reddy is one among the four persons to whom the land of 10 acres and 37.5gts was transferred. The Hon'ble ITAT dealing with the cross appeals of assessee and revenue at page 13 of its order (running pg.644 of PB) held at line about 6 from top as under:*
>
> > *".. In the present case, the impugned property was acquired, vide agreement of sale cum irrevocable general power of attorney dated 22.08.2007, by the assessee together with Shri D.S.Karunakar Reddy, Shri K.Srinivasulu and Shri B.Mukund Rao, in their individual capacities, and as such, the assessee has not derived any benefit from the company, in which he is a director, so as to attract the provisions of S.2(24)(iv) of the Income-Tax Act."*
>
> *59. It is submitted that the Hon'ble ITAT held that it is an acquisition by four individuals viz., Sri S.Narayana Reddy, Sri D.S.Karunakar Reddy, Sri K.Srinivasulu and Shri B.Mukund Rao. This order of the Hon'ble ITAT is upheld by judgement of Hon'ble High Court in ITA.No.726/2014 dated 30.07.2014. A copy of the judgement is enclosed to the written submission.*

60. It is submitted that once the transaction dated 22.08.2007 is held to be sale by the Hon'ble ITAT, then the same cannot be held to be commission in kind, as held by AO and ld. CIT(A). It is submitted that order of ld.AO invoking provisions of section 40a(ia) of the Act to disallow the alleged payment of commission in kind, which is upheld by the ld.CIT(A), both, cannot be sustained.

61. Without prejudice to the above, it is submitted that the Agreement of Sale cum Irrevocable General Power of Attorney dated 22.08.2007 (pages No.207 to 235 of PB- Vol-1) by the landlords, claimants, Appellant herein and Sri V. Ramchander Rao and others to Sri S.Narayana Reddy, Sri D.S.Karunakar Reddy, Sri K.Srinivasulu and Sri B.Mukund Rao for a total consideration of Rs.1 lakh is a document transferring title to the above four individuals. Firstly, it is submitted that the consideration of Rs.1 lakh as per the above deed is sufficient in view of specific clauses in AOS cum irrevocable GPA dated 22.08.2007 wherein the payment of Rs.175,62,50,000 as per compromise petition and LOKADALAT Order is considered as sufficient consideration (Pg.223 of PB- Vol-2). Secondly, it is not a sale made by the Appellant. As on that date, the litigants/claimants in various suits before the courts have relinquished all their rights and interest of whatsoever nature in respect of Ac.41.34 gts in favour of Appellant, to carry out the conditions contained in the compromise petition. It is submitted that the rights received by the Appellant are not 'absolute', in as much as the entire payment of Rs.175,62,50,000 was paid by M/s.DLF and its group. The Appellant is only an agent of DLF group and was hold the above rights in trust for the DLF.

62. Later, this ownership rights in respect of 10 acres and 37.5gts was transferred by the owners and other persons who were parties before Lokadalat in the compromise petition, in favour of Sri S.Narayana Reddy, Sri D.S.Karunakar Reddy, Sri K.Srinivasulu and Sri B.Mukund Rao. It is submitted that Appellant never had 'absolute rights' in respect of the above 10 acres and 37.5 guntas of land. The said land is part of larger chunck of Ac 41.34 gts.

63. Thirdly, it can be seen from various MOUs, AOS cum GPAs, sale deeds etc., filed on record, it is the Appellant which rendered services as an aggregator of land and as agent of DLF. Therefore, the transfer of land of 10 acres and 37.5guntas is a sale and cannot be considered as payment of commission in kind to S.Narayana Reddy, Sri D.S.Karunakar Reddy, Sri K.Srinivasulu and Sri B.Mukund Rao. It is submitted that the role of the Appellant cannot be ignored and it cannot be seen as a passthrough entity of S.Narayana Reddy, Sri D.S.Karunakar Reddy, Sri K.Srinivasulu and Sri B.Mukund Rao. The Appellant in respect of the transactions with DLF has admitted an income of Rs.13,22,59,159 in its profit and loss account and paid taxes on the same. It is therefore humbly submitted that the transaction of Agreement of Sale cum Irrevocable General Power of Attorney dated 22.08.2007 (pgs 207 to 235 of PB-Vol-1) with S.Narayana Reddy, Sri D.S.Karunakar Reddy, Sri K.Srinivasulu and Sri B.Mukund Rao is a sale, and not a payment of commission in

kind. Therefore, since it is a sale, the question of invoking provisions of section 40a(ia) of the Act does not arise.

In view of the above it is prayed that the disallowance of Rs.45,90,60,000 made under section 40a(ia) of the Act, and sustained by the ld. CIT(A), may kindly be deleted."

21.4 Per contra, ld. DR submitted that the transfer of land of 10 acres 37.5 guntas was without any consideration to directors /partners and the assessee firm bought it for Rs 4.20 crore/acre (4.20 X 10.93 acres = Rs 45,90,60,000/-). Further, ld. DR relied on the decision of Hon'ble Andhra Pradesh High Court in the case of Kanchanganga Sea Foods Ltd Vs CIT, 265 ITR 644, 2004 (AP High Court).

21.5. Heard the rival contentions and perused the material on record. As per the case of the Revenue,

- The appellant firm became the legal owner of the lands by Lok-Adalat order dt.22.08.2007.

- That a land of Ac 10-37.5 gts has been transferred to S. Narayan Reddy (Director of M/s. Mali Florex Ltd.), Karunakar Reddy (partner of the appellant firm), B. Mukund Rao and K. Srinivas, who are real estate brokers by the assessee.

- the lands transferred to these persons was for no consideration or meager consideration (Rs.1,00,000/-) on account of the services rendered by them.

- Therefore the consideration of Rs.1,00,000/- in no way considered as consideration. Further the

ownership of the property has been held in the name of the appellant firm vide the said Lok Adalat Order. Therefore, The appellant was responsible to deduct TDS on the value of lands transferred to the said people as commission / brokerage.

- The appellant further relied upon the Valuation report of the DVO, who has valued the extent of Ac 6-18 gts at a value of Rs.1,06,42500/- and contended that the disallowance should be limited to Rs. 1,52,19,583/-.

- The DVO Report relied upon by the assessee was rejected by the ld.CIT(A) on the basis of the finding that "AO has brought out an explicit fact in the para 'no. 10 in page no. 18 where the AO has noted that the lands transferred to Sri S. Narayana Reddy and Sri D.S. Karunakar Reddy were subsequently sold. The AO noted that on 22.04.2008- the land of 3 acres was sold for a consideration of Rs. 11 crores and this was subsequent date of search and therefore, as a factum of Rs.4.20 crores per acre is an established fact not disputed by the appellant."

21.6 We have already held that the assessee was merely acting as an agent of DLF and award of Lok-Adalat did not give rise to transfer of land unless it is followed under the Registration Act. In our view, ld.CIT(A), was wrongly swayed by the Lok-Adalat Award and failed to take cognizance of the Stamp Duty Act, Registration Act, Transfer of Property Act and Legal Services Authority Act, 1987. In our view, if any Award is passed by Lok-Adalat in respect to an immovable property, then it is required to

be registered under the Registration Act on payment of the stamp duty as applicable under the Stamp Duty Act and only thereafter there will be transfer of land.

21.7. In the present case, with respect to the present issue, the assessee along with other parties (38 - First Party Vendors, 10 -Second Party Vendors, 10 - Third Party Vendors and 9 – Claimants / Consenting Party / Forth Party Vendors) have transferred by Registered GPA the land admeasuring Ac.10.37 gts in favour of S.Narayana Reddy, Sri D.S.Karunakar Reddy, Sri K.Srinivasulu and Sri B.Mukund Rao. In the said registered document, it is mentioned at pages 221 to 223 of the paper book as under :

> *"And whereas in pursuance of such intent the First, Second, Third and Fourth Party Vendors have entered into a Memorandum of Compromise that is being filed suit OS No.481/2007 on the file of Principal District Judge, Ranga Reddy District where under the First, Second, Third and Parts First to Seventh of the Fourth Party Vendor have agreed to transfer, convey and assign all rights in favour of Part Eighth of the Fourth Party Vendor or their nominee(s).*
>
> *"And whereas Part Eight of the Fourth Party Vendor has nominated and requested to have the conveyance deed / sale deed executed in favour of the Vendees herein as per the Agreement recorded in the Memorandum of Compromise filed in Os No.481/2007 and the First, Second, Third and Fourth Party Vendors have agreed to execute the agreement of sale cum General Power of Attorney in faovur of the VENDEES.*
>
> *AND whereas the parties hereto have entered into a Compromise in O.S.No.481/2007 on the file of the Principal District Judge, Ranga Reddy District agreeing to pay a total consideration of rs.175,62,50,000/- to all the Vendors requested the Vendors to execute a registered sale deed initially for an extent of Ac.14-02 gts the Vendors insisted that the entire payment of Rs.175,62,50,000/- must be paid at the time of the execution of the registered sale deed even for the part extent of Ac.14-02 gts.* ***As the entire consideration amount for the total extent including the schedule property herein had already been paid the parties have agreed that the Vendees shall pay a nominal amount of Rs.1.00 lakhs as consideration to all the Vendors.*** *This shall be treated as full and final sale consideration for the purpose of sale of the schedule property."*

21.8 From the reading of the above noted clauses mentioned in the registered document, it is amply clear that the Vendors have stated that they have received the entire consideration at the time of entering into Compromise in O.S.No.481/2007, therefore, they have accepted the nominal consideration of Rs.1,00,000/-. Once the registered document conveys that the adequate consideration has been received by the vendors then it was not permissible in law to deny the contents of registered document based on surmises and conjectures of the revenue authority. It was not correct on the part of the revenue to conclude that the land was transferred on the basis of meagre consideration, no doubt the document also referred to sale amount paid while registering the main sale deed.

21.9 Further, the conclusion by the revenue authorities that the assessee became the owner of the property by virtue of the award of Lok-Adalat dt.22.08.2007 also cannot be justified. In our view, the ld.CIT(A) had failed to take cognizance of the registered Agreement of Sale cum General Power of Attorney dt.22.08.2007, by virtue of which the assessee along with 64 other persons have transferred the land in favour of S.Narayana Reddy, Sri D.S.Karunakar Reddy, Sri K.Srinivasulu and Sri B.Mukund Rao. In our view, the finding given by the lower revenue authorities is contrary to record as the assessee did not become the owner of land by virtue of the Lok-Adalat Award. In fact, as per General Power of Attorney cum Sale Agreement dt.22.08.2007, the assessee was mentioned as claimant / consenting party.

21.10 Further, the ld.CIT(A) has failed to take the cognizance of the order passed by ITAT in the case of 291 and 337/Hyd/2012 dated 29.11.2013 (Pgs.632 to 647 of PB-Vol-2) in the case of Sri S.Narayana Reddy. The ITAT at page 13 of its order in Para 6 had held as under :

> *".. In the present case, the impugned property was acquired, vide agreement of sale cum irrevocable general power of attorney dated 22.08.2007, by the assessee together with Shri D.S.Karunakar Reddy, Shri K.Srinivasulu and Shri B.Mukund Rao, in their individual capacities, and as such, the assessee has not derived any benefit from the company, in which he is a director, so as to attract the provisions of S.2(24)(iv) of the Income-Tax Act."*

21.11 The Tribunal in the case of the purchaser namely, S. Narayana Reddy in ITA No.291/Hyd/2012 has considered that the transaction of the land by the said S. Narayana Reddy was an acquisition and has not considered it as commission, and therefore, held that the provisions of Section 2(24)(iv) are not applicable. The above said order of the Tribunal was upheld by the Hon'ble High Court while deciding the ITTA No.489 of 2014. The said order is available on record.

21.12 In our considered opinion, once the sale has been made by 64 persons along with the assessee in favour of Shri S. Narayana Reddy, Shri D.S.Karunakar Reddy, Shri K.Srinivasulu and Shri B.Mukund Rao and it was so considered by the Tribunal and High Court in ITTA 489/2014, then it is not permissible in law to treat the transfer of the very same land in the case of the assessee as commission within the meaning of section 194H of the Act. The law commands the revenue to be consistent and uniform in treating the tax payment.

21.13 As held by us that the assessee was merely acting as an Agent of DLF and therefore, there was no obligation on the part of the assessee to pay the commission to Shri S. Narayana Reddy, Shri D.S.Karunakar Reddy, Shri K.Srinivasulu and Shri B.Mukund Rao. The commission, if any, was payable by the DLF for the services, if any received by the DLF.

21.14 Further, the revenue had solely relied upon the submission given by D.S. Karunanakar Reddy in the scrutiny proceedings / appellate order which is as under :

> *"The said property was left only for the purpose of distribution among the partners to the deal, who have either* ***incurred expenditure on behalf of DLF or rendered services for completion of the project."***
>
> *Emphasis supplied by us.*

21.15 From the perusal of the reply of Shri D.S. Karunakar Reddy, it is the case of the Revenue that the land was left to compensate the partners for the expenditure incurred on behalf of the DLF or rendered the services for completion of the project.

21.16. Thus, it is clear from the statement of D.S. Karunakar that the land was allegedly left to compensate for the expenditure made on behalf of DLF. In our view, once the land was given to compensate the expenditure, then the rigors of Section 194H are not attracted. Secondly, it is the case of Revenue that the land was left for to compensate for the services rendered for the project of DLF. In our view, the services, if any, were rendered by these persons to the DLF, therefore, the land, if any, were to be transferred, by DLF to compensate services made to the DLF. Hence, in our view, the obligation is on the DLF to deduct the tax, if any, under section 194H of the Act. There was no obligation on the assessee to deduct the taxes as

claimed by the Revenue, therefore, the reliance on the submission of Shri D.S. Karunakar Reddy is without any basis. In view of the above, the finding given by the ld.CIT(A) is without any basis.

21.17 As we have decided that the documents executed by the assessee along with other parties were in the nature of sale and were not in the nature of commission, therefore, the alternative argument with respect to the determination of the value of land transferred determined by Assessing Officer / ld.CIT(A), by ignoring the report of the DVO became academic. However, we may mention that the reasons given by the Assessing Officer/ ld.CIT(A) to reject the DVO Report were also not correct, as there are contemporaneous clinching documents to show that the land was acquired by the State Government for widening of the road and part of land was submerged being water body, therefore, incapable of being sold by the assessee. We have made this observation only for completeness of the record. In the light of the above, we allow ground nos.15 and 16 of the assessee. Thus, these grounds of the assessee are allowed.

22. **ADDITIONAL GROUNDS**

Additional grounds raised by the assessee are **with respect to the addition of Rs.27,09,00,000/- in respect of value of unsold land of Ac.6.18 guntas transferred to S. Narayana Reddy and another without consideration**.

22.1 In this regard, ld. AR has drawn our attention to page 18 and 19 of the order of Assessing Officer wherein it was held as under :

"10. Taxing of unsold balance lands as on 31.03.2008 which are transferred to the above persons without consideration:

As the assessee firm is the owner of this land, therefore, the unsold land as on 31.03.2008 transferred to the above persons without -consideration needs to be taxed in the hands of the firm for the reasons discussed in the para no 8 above. The actual balance unsold land is Rs 6 acres 18 guntas. In this connection, the assessee firm was requested vide this office notice U/s. 142(1) dated 30-10-2009 why the above unsold land should not be taxed in the hands of the assessee firm. The AR of the assessee in his letter dt.26.11.2009 has submitted that the balance land of Acre 6-18 guntas is under water body namely FTL and therefore, it has no value.

The submissions of the assessee are considered and the same are not acceptable for the following reasons:

(i) it is seen that the assessee firm purchased the above lands at an average

(ii). It is also noticed that Mr. S. Naryan Reddy and Mr. D.S. Karunakar Reddy to whom the above lands are transferred tsold 3.00 acres out of the above land for a consideration of Rs.11.00 crores as per the agreement of sale dt.22.04.2008 to Mirza Mustafa Baig, Mirza Nasir Baig and Mrs. Gousia Begum. The consideration of the above amount is also received by the Mr.Narayan Reddy & Mr. Karunakar Reddy. Mirza Mustafa Baig, Mirza Yousuf Baig, Mirza Nasir Baig and Mrs. Gousia Begum are also assessed to tax in this circle. These assessees have claimed 54B exemption for the Assessment Year 2008-09 in respect of the purchase of the above lands.

(iii) During the year under consideration the firm sold to the DLI Group Company at the rate of 12.50 crores per acre from the Land purchased by it. The above balance Land is part of the Lands sold to DLF Group Company.

Considering the above reasons the purchase price of the above lands by the firm is treated as income of the above firm which are transferred to the above persons without any consideration. The value of these Lands comes to Rs.27.09 crores (Rs.4.20 crores per acre x 6.45 acres). Accordingly the value of unsold lands of Rs.27,09,000,00/- which is transferred without consideration is added to the total income of the assessee.

22.1. Before us, ld. AR reiterated the submissions made before the ld.CIT(A). He further submitted that the alleged sale of land of 3 acres cannot be part of 10 acres and 37.5 guntas, as each bit of land was accounted and explained.

22.2 The relevant portion of the written submissions filed by the ld. AR pertaining to this issue reads as under :

> *"In a query by the Hon'ble ITAT on the above issue, the ld. CIT-DR has filed a corrigendum order under section 154 of the Income Tax Act. The AO vide said order dated 14.06.2010 has passed an corrigendum modifying the assessment order dated 31.12.2009 by excluding para 10 from the asst. order. It is submitted that the Appellant was not aware of the above corrigendum and therefore was pursuing the same before ld. CIT(A) as well as before this Hon'ble ITAT.*
>
> *70. In view of the above corrigendum, which appears to have become final, it is prayed that the Hon'ble ITAT may dispose of the additional grounds in the light of the corrigendum order dated 14.06.2010 passed under section 154 of the Act."*

22.3. Per contra, ld. DR submitted that no addition on this account has been made in the computation of income though discussed at para 10, page 18 of the assessment order. Even no grounds were taken by the assessee before the CIT(A) also. Even a corrigendum order under section 154 dated 14.06.20 10 was made by the Assessing Officer clarifying that "the order u/s 143(3) dated 31.12.2009 is modified so as to exclude para 10 from the above order passed and in view of the aforesaid reason, the additional ground so raised need not be admitted.

22.4 Heard the rival contentions and perused the material on record. As per the corrigendum order under section 154 dated 14.06.2010 made by the Assessing Officer, it is mentioned as under :

> *"…*
>
> *Therefore, the order under section 143(3) dated 31.12.2009 is modified so as to exclude Para 10 from the above order passed. However, there is no change in the total income determined at Rs.125,74,44,335/- and the tax payable at Rs.55,10,56,240/- by the assessee, for the assessment year 2008-09 as per section 143(3) order dt.31.12.2009."*

22.5 As per the Corrigendum order issued by the Assessing Officer, the assessee cannot be said to be aggrieved the order of the Assessing Officer and, therefore, the ground raised by the assessee by way of additional ground became infructuous and accordingly, the same are dismissed. Thus, the additional grounds raised by the assessee are dismissed as infructuous.

23. In the result, the appeal of the assessee is partly allowed for statistical purposes on the above terms.

Order pronounced in the Open Court on 5th February, 2024.

Sd/-	**Sd/-**
(R.K. PANDA) **VICE PRESIDENT**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 05th February, 2024.
TYNM/sps

Copy to:

S.No	Addresses
1	Demi Realtors, Flat No.610, 6th Floor, Babukhan Estate, Basheerbagh, Hyderabad – 500 001.
2	The Deputy Commissioner of Income Tax, Circle 6(1), I.T. Towers, Hyderabad.
3	Pr.CIT - 1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order