

**IN THE INCOME-TAX APPELLATE TRIBUNAL “B” BENCH,
MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 2728/MUM/2023
(निर्धारण वर्ष / Assessment Year :2016-17)**

Baswant Builders and Developers Pvt. Ltd. Shop No. 115, 116, SFS Complex, Jalna Road, Aurangabad, Maharashtra-431005	v/s. बनाम	ACIT Circle-3(1)(1), Mumbai Aayakar Bhavan, M.K. Road, Mumbai, Maharashtra-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCB7464N		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	None
राजस्व की ओर से /Revenue by:	Shri Laxmi Kant

सुनवाई की तारीख / Date of Hearing	18.03.2025
घोषणा की तारीख/Date of Pronouncement	26.03.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 16.06.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2016-17.

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

“The Commissioner of Income-tax (Appeals) at the National Faceless Appeal Centre (hereinafter referred to as the CIT(A)) erred in upholding the action of the Assistant Commissioner of Income-tax, Circle 3(1)(1), Mumbai (hereinafter referred to as the Assessing Officer) in invoking the provisions of section 40A(3) and in making a disallowance of Rs 2,07,88,100, being labour and wages expenditure on the ground that the appellants have failed to demonstrate the correctness of the amount paid to contractor(s).

The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in invoking the provisions of section 40A(3) and in making the impugned disallowance inasmuch as he has not correctly appreciated the facts of the case in its entirety and hence, the impugned disallowance of Rs 2,07,88,100 is bad in law and needs to be deleted.

The appellants further, contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer inasmuch as there is no contravention of the provisions of section 40A(3) and hence, the impugned disallowance of Rs 2,07,88,100 is bad in law and needs to be deleted.”

3. Brief facts of the case are that the assessee filed return declaring income of Rs. 1,25,53,730/- for AY 2016-17 dated 14.10.2016. The assessee is engaged in the business of development of infrastructure facilities viz. construction of roads, bridges and buildings. The case was selected for limited scrutiny. Ld. AO observed that the assessee had made various expenses on account of labour charges, wages, rates and taxes which were paid in cash in contravention of section 40A(3) of the Act and are, therefore, disallowable. In response to the show cause notice issued by the Ld. AO in this regard, the assessee submitted that the payments were given to multiple labourers in a single day on a single voucher, as such these are not covered u/s 40A(3) of the Act. He further claimed that the payments towards taxes and duties paid to the government are covered under the exception to section 40A(3) r.w.r. 6DD(b). After examining the details



and evidence furnished by the assessee, Ld. AO accepted the claim regarding the payment of Rs. 10,86,064/- to the Aurangabad Municipal Corporation as allowable u/s 40A(3) r.w.r. 6DD(b). With respect to the balance cash payment of Rs. 2,07,88,100/-, Ld. AO made the disallowance u/s 40A(3) with the following observations:

“5.3 The submission of the assessee is considered carefully, but not found acceptable in total. Payments made to Aurangabad Municipal Corporation and O/o The District Magistrate, Aurangabad amounting to Rs. 10,86,064/- is acceptable u/s 40A(3) r.w. Rule 6DD(b). However, on the other payments, the vouchers submitted by the assessee contain only names of the laborers and the amount paid to the labourers. On going through the vouchers, identity of the labourers could not be verified as no identity no. was provided to them. From the sample vouchers it is also observed that there are many cases where signatures made by the labourers on receipt of wages were of same writing or signed by one person. For e.g. in one case for the payment made for the site Balimela Junction to Tunnel camp (BBDPL) type of work -BM, in between 16th to 31st December 2015, there are two labourers namely Manohar Gaikwad and Mohan Mahapatra. In this case both the signatures were made in Hindi and it can be clearly viewed that a single person made both the signatures. Similarly, for the payments made for the site Balimela Junction to Tunnel camp (BBDPL) between 16th to 31st December, 2015 for type of work - BM and for type of work-CD, one labour namely Mandar Kale made different signatures for payments received in two different type of work. It looks absurd from the vouchers submitted by the assessee that not a single labour was absent during working day. Hence, from these examples it is clear that the vouchers produced by the assessee are self made vouchers to match the accounts for cash transactions made by the assessee. Therefore, the evidences submitted by the assessee cannot be considered on this issue as they are totally self made.”

4. Aggrieved with the order of Ld. AO, the assessee preferred an appeal before Ld. CIT(A). Vide order dated 16.06.2023, the assessee's appeal was dismissed with the following observations:

“6.2 The appellant had filed supporting vouchers against payment of labour charges to learned AO and the same were submitted during appellate proceedings. The appellant contested that the payment is made towards daily wages of workers employed for its under-construction site. Such workers do not have bank accounts and the payment is made to contractor on principle to principle basis.

6.3 On perusal of the sample payment vouchers it is observed that the contractor has supplied more than 150 workers in a month for which collective payment of



approximately Rs.9,80,000/- is made to contractor viz. Patil Construction Ltd for one of its sites. Apart from this the appellant did not file any further document.

6.4 The appellant did not submit any daily attendance register which showcases that these many labourer were working at his site. Neither he submitted any voucher signed by any labourer which demonstrates that any wages were paid to him by the contractor. In absence of basic supporting documents, the claim of appellant cannot be accepted to be correct.

6.5 In view of the above I am of the considerate view that correctness of amount paid to contractor towards wages payable to workers are not being demonstrated and the appellant has failed to discharge his primary onus. Therefore, the addition made by learned AO for sum of Rs.2,07,88,100/- is liable to be upheld.”

5. Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before the Tribunal. It is seen that since the date of institution of the appeal on 03.08.2023, the assessee has been seeking adjournments on one pretext or the other. On 26.03.2024, the assessee was granted final opportunity to argue his case, on 10.06.2024, subject to payment of cost of Rs. 5,000/-. Even thereafter, the assessee has been seeking adjournment time and again. Finally on 27.07.2025, when the assessee again sought adjournment, a last and final opportunity was granted to the assessee on 13.02.2025 subject to deposit of token cost of Rs. 1,100/-. However, no compliance was made by the assessee even on this date and only a letter for adjournment was filed. Under these circumstances, the appeal is being decided after hearing the Ld. DR and taking into account the written submissions filed by the assessee vide letter dated 25.10.2025.

6. We have carefully considered the rival submissions. It is seen that the assessee has only furnished copies of internal vouchers evidencing payment of



labour charges in cash all of which are exceeding the prescribed limit u/s 40A(3) of the Act.

7. These documents were filed before the Ld. AO as well. However, no supporting documents such as labour register showing payments made to individual labourers were submitted either before the AO or at the appellate stage. In the absence of requisite evidence, we hold that Ld. AO was justified in treating the payment of more than 20,000/- in a single day through a single cash voucher as disallowable u/s 40A(3) of the Act. The assessee has been unable to substantiate its claim by filing requisite evidence before Ld. CIT(A) as well as before us. We, therefore, uphold the decision of the Ld. CIT(A) in confirming the addition on account of disallowance of Rs. 2,07,88,100/- u/s 40A(3) of the Act.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 26.03.2025.

Sd/-

NARENDER KUMAR CHOUDHRY

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 26.03.2025

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant



2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

