

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 1367/Mds/2016  
निर्धारण वर्ष /Assessment year : 2011-2012.

G K Industrial Park Limited,  
Unit B 16, G K Industrial Park  
Lalgudi Road, Reddimangudi  
Trichy 621 105.

**Vs.** The Deputy Commissioner of  
Income Tax,  
Circle I,  
Trichy

**[PAN AADCG 0549C]**  
**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. S. Sridhar, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Smt. Ruby George, IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 10-11-2016  
घोषणा की तारीख /Date of  
Pronouncement : 30-11-2016

**आदेश / ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

In this appeal filed by the assessee, it assails an order dated 30.03.2016 of the Id. Commissioner of Income Tax (Appeals)-1, Trichy u/s.263 of the Income Tax Act, 1961 (herein after referred to as "the Act").

**2.** Facts apropos are that assessee engaged in the business of developing lands into industrial projects had filed its return of income for the impugned assessment year disclosing a loss of ₹84,23,213/. During the course of original assessment proceedings, Id. Assessing Officer examined books of accounts, bank accounts, bills and vouchers produced by the assessee. Ld. Assessing Officer found that assessee had set apart 30% of land holdings for common facilities. As per Id. Assessing Officer assessee had 576.28 acres of land and 30% thereof would work out to 172.88 acres, whereas assessee had shown 186.49 acres for common facilities. When enquired, reply of the assessee was that land area was originally considered as 621.65 acres and not for 576.28 acres and the higher area left for common facilities was due to this reason. Ld. Assessing Officer disbelieved this version. He was of the opinion that assessee had made excess claim of ₹15,43,239/- towards common facilities. Assessment was made making an addition of the like amount.

**3.** Later the Id. Commissioner of Income Tax (Appeals) issued a show cause notice u/s.263 of the Act to the assessee. In the said notice, it was stated that assessee had made cash payments totalling ₹1,99,65,150/- during the impugned assessment year in contravention to section 40A(3) of the Act. Ld. Commissioner of Income Tax

required assessee why jurisdiction vested on him under Sec. 263 of the Act should not be invoked. Reply of the assessee was that Shri. K. Muralidharan, its Director was authorized by the Board of Directors to act as its agent for land purchase and he was required to effect payments to land owners in cash. Assessee pointed out that this was brought to the notice of the Id. Assessing Officer during scrutiny proceedings. According to assessee, it was saved by Sub Rule (k) of Rule 6DD. Further, argument of the assessee was that Rule 6DD had to be interpreted liberally as held by Hon'ble Delhi High Court in the case of *R.C. Goel vs. CIT (2013) 259 CTR 15*. However, Ld. Commissioner of Income Tax was not impressed by this reply. He was of the opinion that there existed a employer- employee relationship between assessee and Shri. K. Muralidharan and he could not be construed as an agent of the assessee company to fall within limb (k) of Rule 6DD. According to him, essential condition to invoke this exemption clause was existence of a set of circumstances requiring payments in cash. Ld. Commissioner of Income Tax held that Assessing Officer had failed to make necessary enquiry on this issue. He set aside the assessment order with regard to cash payments for purchase of land, and directed the Id. Assessing Officer to pass a suitable order.

4. Now before us, Id. Authorised Representative strongly assailing the order of the Id. Commissioner of Income Tax submitted that during the course of the assessment proceedings, Id. Assessing Officer had enquired on the very same aspect raised by the Id. CIT and assessee had given a detailed reply. According to him, Id. Assessing Officer had taken a possible view which was not illegal or unlawful. Further, according to him, order of the Assessing Officer could not be considered as erroneous in so far as it was prejudice to the interest of the Revenue. Id. Authorised Representative placed reliance on the judgment of Hon'ble Apex Court in the case of *Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83*.

5. Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

6. We have considered the rival contentions and perused the orders of the authorities below. Letter filed during the course of assessment proceedings on which strong reliance was placed by the Id. Authorised Representative, in support of his contention that the issue was considered by the Assessing Officer, is reproduced as under:-

- a. *"Mr.K.G.Muralidharan was authorized by the Board to act as an Agent of the company for the entire land agglomeration of 600 acres. As agent of the company, he, identified the*

*land owners, negotiated the price and also title scrutiny of the land. He was also responsible for maintaining the cost of acquisition without wide fluctuations.*

- b. In view of the above and ensure quick completion of the land purchase he has to pay cash to the land owners who had no bank accounts.*
- c. All the villagers who resided in the village had no means of any other income and hence were to be paid by cash.*
- d. All the villagers who have sold the land were not know to the Agent acting on behalf of the company and as per their insistence the cash payments were made in the presence of the Registering Government Authority.*
- e. The company had to main the identity of the buyer so that there will no issues / demand raised for price variation or for employment.*
- f. It is also to be noted that the entire consideration so paid to the villagers land owners were made to them in the presence of Sub Registrar who after verification registered the document. You may kindly observe from the above that the said transactions are payments made by any person to his Agent, who is required to make payments in cash for goods or services on behalf of such persons and is within Rule 6DD(k) of the Income tax Rules and are exempted from the application of the said 40A(3)"*

No doubt assessee does mention that it was saved by Rule 6DD(k) from the rigours of Sec. 40A(3) of the Act. What has been done by Assessing Officer in the assessment has been narrated by us at para 2 above. There was not even a whisper regarding application of Sec. 40A(3) of the Act, for the cash payments made by the assessee. Ld.

Assessing Officer had not mentioned anything on this despite an aggregate cash payments of ₹1,99,65,150/-. In our opinion not doing an enquiry warranted under the circumstances, which a prudent person would have done, shows non-application of mind. It is a clear instance of absence of enquiry and not inadequate enquiry. Assessee was not able to show before us any specific query raised by the Assessing Officer with regard to the application of Sec. 40A(3) of the Act. Letter claimed by the assessee to have been furnished during the course of the assessment proceedings, pertinent part of which has been reproduced above, does not say that it was being given pursuant to any query made by the Id. Assessing Officer. Hon'ble Supreme Court in the case of *Toyota Motor Corporation vs. CIT*, 306 ITR 52, while affirming the judgment of Delhi High Court reported in 306 ITR 49, had held that it was required for an Assessing Officer to pass a reasoned order. The law laid down by the Apex Court, in our opinion is all the more relevant here since issue which obviously required a deep attention, and on which a specific letter was filed by the assessee, was not dealt with, but had escaped the vigil of the Id. Assessing Officer. Lack of enquiry did render the order of the Assessing Officer erroneous in so far as it was prejudicial to the interests of the Revenue. We are of the opinion that no justifiable

reason has been shown by the assessee for interfering with order of the Id. Commissioner of Income Tax.

7. In the result, appeal of the assessee stands dismissed.

Order pronounced on Wednesday, the 30th day of November, 2016,  
at Chennai

Sd/-

(एन.आर.एस. गणेशन)  
(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)  
(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 30th November, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |