

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC : NEW DELHI

BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA No.508/Del/2014
Assessment Year : 2006-07

Madhusudan Buildcon Pvt. Ltd.,
F-6/5, Vasant Vihar,
New Delhi.

Vs. ACIT,
Central Circle-17,
Jhandewalan,
New Delhi.

PAN: AAECM1048H

(Appellant)

(Respondent)

Assessee By : Shri B.K. Dhingra, Director
Department By : Shri Amrit Lal, JCIT

Date of Hearing : 15.06.2015
Date of Pronouncement : 15.06.2015

ORDER

This appeal by the assessee arises out of the order passed by the
CIT (A) on 30.12.2013 in relation to the assessment year 2006-07.

2. The only issue argued by the Id. AR is against the sustenance of addition of Rs.20,000/- made by the Assessing Officer u/s 40A(3) of the Income-tax Act, 1961 (hereinafter also called 'the Act').

3. Briefly stated, the facts of the case are that the assessee is engaged in real estate business. During the course of the year in question, it entered into a joint venture with M/s Newera Sanitarware Pvt. Ltd. and M/s Yah Softech Pvt. Ltd., for purchasing a plot of land admeasuring 121 kanals and 10 marlas, situated at Dehri Salam, Vaka Siwana Mouja Dhankot, Tehsil and District Gurgaon. The assessee's share in the plot is 25%. While entering into the Agreement for the purchase of property, the three companies made an initial advance of Rs.35 lac. While making such initial advance payment, a total cash payment of Rs.4 lac was also made. The assessee's 25% share in such cash payment was at Rs.1 lac. Such cash payment of Rs.1 lac was recorded by the assessee in its books of account on 29.12.2005. It is a matter of record that some dispute arose between the parties and the deal could not be finalized and the same is still undecided. The AO invoked the provisions of section

40A(3) and made an addition of Rs.20,000/-, being 20% of Rs.1 lac paid by the assessee in cash. The ld. CIT(A) upheld the addition.

4. I have heard the rival submissions and perused the relevant material available on record. A copy of the assessee's Trading, Profit & loss account for the year in question is available on page 12 of the paper book, from which it can be seen that there is no income and the expenses claimed as deduction are only to the tune of Rs.4,135/-. The assessee paid a total sum of Rs.40 lac as advance of land at Dhankot which was shown in the Balance sheet under the head 'Loans & Advances'. A copy of such Balance sheet is available at page 11 of the paper book. It is from this total advance of Rs.40 lac paid by the assessee that a sum of Rs.1 lac was paid in cash and the AO has invoked the provisions of section 40A(3) for making disallowance @ 20% of such cash payment.

5. In order to appreciate the rival contentions on the applicability of section 40A(3), it would be apposite to extract the relevant part of this provision at the material time, as under:-

“(3) Where the assessee *incurs any expenditure* in respect of which payment is made, after such date (not being later than 31st day of March, 1969), as may be specified in this behalf by the Central Government by notification in the Official Gazette in a sum exceeding twenty thousand rupees otherwise than by an account payee cheque drawn on a bank or account payee bank draft, twenty per cent of such expenditure shall not be allowed as a deduction

6. A careful perusal of this provision transpires that where the ‘assessee incurs any expenditure in respect of which payment is made’ in a sum exceeding Rs.20,000/- otherwise than by account payee cheque etc., then, twenty percent of the amount paid in cash is disallowable. Thus, it becomes apparent that in order to invoke the provisions of section 40A(3), it is *sine qua non* that the assessee must have incurred expenditure in respect of which such payment is made in cash. Section 40A has the marginal note: ‘*Expenses or payments not deductible in certain circumstances*’. This section has been placed under Chapter IVD of the Act. Sub-section (1) of section 40A provides that : “The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession". A cursory look at the above provisions divulges that in

order to make any disallowance under section 40A(3), it is a pre-condition that the assessee must have claimed deduction, directly or indirectly, for which payment is made in cash exceeding the specified limit. *Per contra*, if the assessee has not claimed any deduction, directly or indirectly, even if the payment is made in cash, the provisions of the computation of income under the head 'Profits and gains of business or profession' shall not apply to that extent and section 40A(3) will become non-operative.

7. I am confronted with a situation in which albeit the assessee made payment of Rs.1 lac in cash towards advance for purchase of a piece of land, but, no deduction was claimed for this sum. This amount has been directly taken to the balance sheet and has been shown as advance under the head 'Loans and advances.' Under such circumstances, when there is no claim for deduction of Rs.1lac, the provisions of section 40A(3) cannot be attracted for making any disallowance for a sum of Rs.20,000/- as this payment is not towards any 'expenditure incurred'

during the year and has not been claimed as deduction by the assessee.

I, therefore, order for the deletion of this addition.

8. No other ground was argued by the ld. AR. Such grounds, therefore, stand dismissed as not pressed.

9. In the result, the appeal is partly allowed.

The order pronounced in the open court on 15.06.2015.

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 15th June, 2015.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.