The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

ITTA No.730 of 2017

Dt: 06-12-2017

Between:

VVR Housing India Private Limited,
Ameerpet, Hyderabad,
Rep. by its Managing Director Sri Y.Adiseshu

....Appellant

and

Commissioner of Income Tax-III,
Hyderabad.

....Respondent

Counsel for the Appellant: **Mr.TVL.Narasimha Rao for Mr.GVN.Hari**

Counsel for the respondents: **Mr.B.Narasimha Sarma**

The Court made the following:

Judgment: **(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)**

The following substantial questions of law have been raised by the appellant/assessee in this Appeal filed against Order, dated 08-11-2013, in ITA.No.1681/Hyd/2010, on the file of the Income Tax Appellate Tribunal, Hyderabad 'A' Bench, Hyderabad, pertaining to assessment year 2006-2007.

> "(A) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in sustaining the disallowance of Rs.1,32,16,943/- u/s 40 (A) (3) of the Income Tax Act, 1961 ?
> (B) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in applying the provisions of S.40(A)(3) of the Act when each of the payments was less than Rs.20,000/- ?
> (C) Without prejudice to the above substantial questions of law, whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in upholding the disallowance on an amount of Rs.6,60,84,715 when expenditure claimed is only Rs.5,39,59,715 out of which provisions of S.40(A)(3) of the Act were found to be not applicable on Rs.1,06,35,000?"

At the hearing, Mr.TVL.Narasimha Rao, learned Counsel appearing for Mr.GVN.Hari, learned Counsel for the appellant, has advanced two submissions *viz.*, (1) that, on the facts of the case, application of Section 40A(3) of the

Income Tax Act, 1961 (for short 'the Act'), was erroneous and that both the appellate fora have wrongly dismissed the appeals of the appellant; and (2) that even if the first contention fails, the Assessing Officer (AO) ought to have restricted the application of Section 40A(3) to Rs.4,33,24,715/-.

Mr.B.Narasimha Sarma, learned Senior Standing Counsel for Income Tax Department, opposed the above submissions and stated that, as noted by the Tribunal in its order, the appellant has paid huge amounts running into lakhs/crores, as the case may be, to the land owners towards sale price in cash with a view to frustrate the intendment of the legislature in regulating the receipts and payments only through bank transactions and that therefore, the AO has rightly invoked the provisions of Section 40A(3) of the Act by disallowing the deductions claimed by the appellant in respect of the cash payments made to the owners of the lands purchased by it.

As regards the alternative submission, the learned Senior Standing Counsel submitted that the correctness or otherwise of the caliculations does not give rise to a substantial question of law and that therefore, the Appeal is liable to be dismissed.

It is not in dispute that substantial amounts have been paid by the appellant in cash to a handful of land owners. The stand taken by the appellant that each payment did not exceed Rs.20,000/- does not deserve to be accepted, as there appears to be a deliberate attempt to run cash transactions involving crores of rupees contrary to the legislative intent. As rightly observed by both the appellate fora, the appellant failed to explain the circumstances under which it had to resort to cash payments of huge money. Evidently, the appellant has indulged in staggering of payments to facilitate the land owners to avoid payment of income tax. Therefore, we are of the opinion that the AO has rightly disallowed the payments made to the land owners by invoking the provisions of Section 40A(3) of the Act. Hence, the substantial question of law framed with respect to this aspect is answered against the appellant.

Coming to the alternative submission, as rightly submitted by the learned Senior Standing Counsel, the caliculation of disallowable payments falls in the realm of the question of fact. If the appellant finds that the Tribunal has committed an error in caliculating the amount, it shall be free to file an application for rectification of the assessment order under Section 254 of the Act.

Subject to the liberty given to the appellant as above, the Appeal is dismissed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 06-12-2017
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