

IN THE INCOME TAX APPELLATE TRIBUNAL

"DB" BENCH, NAGPUR

BEFORE SHRI PAWAN SINGH, JM &

SHRI KHETTRA MOHAN ROY, AM

ITA No. 625/Nag./2024

(Assessment Year : 2013-14)

ITA No. 626/Nag./2024

(Assessment Year : 2014-15)

Shri Ganesh Builders Ltd.,

1st Floor, Mudliyar Complex,

Mehadia Chowk, Dhnatoli,

Nagpur-440012.

PAN – AAKCS9370G

..... Appellant

v/s

DCIT, Circle-1,

BSNL, RTTC Building,

Nagpur -440010

..... Respondent

Assessee by : Shri Himesh Demble, CA

Revenue by : Shri Surjit Kumar Saha,
Sr. DR

Date of Hearing – 19/02/2026

Date of Order – 24/02/2026

ORDER

Per: Khettra Mohan Roy, AM

These appeals by the assessee are against the common order dated 09/12/2024, passed by the learned Commissioner of Income Tax (Appeal)/National Faceless Appeal Centre (NFAC), Delhi [for short, "*Id. CIT(A)*"] for the Assessment Years (A.Y.) 2013-14 & 2014-15. *The assessee has raised the similar grounds of appeal in both the A.Y. except variation of amounts in figures. We are first taking ITA*

No. 625/Nag/2025 for A.Y. 2013-14 as lead case. The assessee has raised the following grounds of appeal:

"1. That, on the facts and circumstances of the case, the order passed by the Ld. CIT(A) is bad in law, void ab initio, and unjustified.

2. That, on the facts and circumstances of the case, the Ld. A.O. has erred in law as well as in the facts on making and Hon'ble CIT(A) erred in confirming the addition of Rs. 21,55,000/- u/s 40A(3) of the I.T. Act, 1961 on account of disallowance of the amount paid by the assessee for the purchase of land by ignoring the explanation and documents given during the course of proceedings.

3. That, on the facts and circumstances of the case, the Ld. CIT(A) has erred in interpreting the provision envisaged u/s 40A(3) of the I.T. Act, 1961.

4. That, on the facts and circumstances of the case, the Ld. A.O. has erred in law as well as in the facts on making and Hon'ble CIT(A) erred in confirming the addition of Rs.3,83,800/- by not accepting the income from agriculture and treated the same under the head income from other sources by ignoring the explanation and documents given during the course of assessment proceedings."

2. The assessee has submitted detailed note on the entire facts matrix which is reproduced as below:

"The assessee is Public Limited Company, having income from business. The assessee has filed its return of income on 27.11.2013 showing net income of Rs. 1,07,26,804/-. Subsequently the return of income of assessee was selected for scrutiny assessment and accordingly an order u/s 143(3) of the Income Tax Act, 1961 was passed in which in an amount of Rs. 21,55,000/- on account of cash payment above 20,000/- towards

purchase of agricultural land and an amount of 3,83,800/- was added to the income of the assessee company on account of agricultural income.

During the year under consideration the assessee company has purchased agricultural land bearing Khasra No. 97/2, Sheet No.942/20 City Survey No.8, 80 Mouza Nari,Nagpur for total consideration of Rs. 77,00,000/- vide Sale deeds executed on 22/06/2012. From the sale deed your honour will observe that out of the total amount of Rs. 77,00,000/-, a sum of Rs. 21,55,000/- was paid by other than by account payee cheques, only on request of the vendor. The cash payment was only looking to the business expediency. The parties from whom the assessee had purchased agricultural land are farmers and mainly resident of village and at time they need some cash. Looking to the business expediency and other relevant factors the assessee company has no option but to make the payment in cash as per their request, otherwise, there is all possibility the assessee company may loose the land transaction.

During the course of assessment proceeding the learned A.O. has asked to the assessee that why the cash payment should not be disallowed u/s. 40A(3) of the I.T.Act, 1961, during the course of assessment proceeding the assessee has submitted that:

As regards the details about cash payment of Rs.21,55,000/- in cash, Otherwise than by account payee cheque, to Sri Ravindra Rameshwaram Shirke and Shri Shankar Rameshwar Shirke, towards purchase of agricultural land, in this connection we would like to submit that the assessee has paid a sum of Rs. 21,55,000/- to Shri Ravindra Rameshwar Shirke and Shri Shankar Rameshwar Shirke towards purchase of agricultural land situated at Kh. No. 97/2, Sheet No.942/20 City Survey No.8, 80 Mouza Nari, Nagpur. We are also enclosing herewith the copy of

ledger account alongwith copy of purchase deed as annexure-1 for your reference and records. From the ledger account your honour will observe that the assessee company has tried to make maximum payment only by banking channel. The assessee after taking into considerations of the business expediency and to materialize the transactions and other relevant factors the assessee has made the payment in cash. In fact assessee has absolutely no option to make the payment otherwise than cash. We would like to also inform you sir that all the payment made to Shri Ravindra Rameshwar Shirke and Shri Shankar Rameshwar Shirke has been duly accounted for in the regular books of accounts by the assessee company. From the ledger account it is absolute clear that the assessee M/s. Shree Ganesh Builder Lids. Had made the payment in cash was at the request of vendor and not with any intention of evasion of taxes. The total consideration was clearly mentioned in the sale deed and both the parties have shown the payments and the receipts of cash.

Section 40 A(3) reads as under:

40A. Expenses or payments not deductible in certain circumstances

(1)

(2)

(3) Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.

Provided that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section(3) and this sub-section where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee

cheques drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors.

*The aforesaid section clearly state that where the assessee incurred any expenditure in respect of which a payment was made in cash no deduction shall be allowed in respect of such expenditure exceeding Rs.20,000/- to a person in a day. The proviso is also made in which it is stated that "**in such cases and such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, consideration of Business expediency and other relevant factors the disallowance shall not be made for the payment made otherwise then by account payee cheque**".*

In fact the legislature introduced the provision, with certain objects. The object of the provision of section 404 (3) is to check the evasion of taxes so that the payment is made from the disclosed sources. Both the payer and the payee would be showing the respective account the payment made and received. It is to be supposed that the transaction must be genuine transaction.

In this case the assessee had made all the payment except Rs. 21,55,000/- by account payee cheque only later on at the request of the vendor certain payments were made in cash, after taking into consideration as regard to the business expediency and other relevant factors. The parties to whom the assessee had made payment were duly accepted the amount received in cash before the Joint Sub-Registrar Class-2 Nagpur City No.-1

We would like to further inform you sir that the payments which was made is not in respect of any expenditure which are claimed in the Profit and loss account as expenses and therefore there cannot be any disallowance of payments made towards purchase of land.

In view of the above facts and looking to the totality of the facts and circumstances and genuineness of all the transaction and particular that it is not claimed as expenditure. No disallowance shall be made in respect of payments made otherwise than by cash for purchase of land.

However during the course of assessment proceeding the learned assessing officer has alleged that the assessee is a company and the sole business of the assessee is of a Builder, Developer Real Estate and Construction activities. It is seen from the accounts that in respect of the land purchased by the assessee, initially; the same is accounted for and reflected in the balance sheet as fixed asset/ advances for purchase of land. Whenever the construction activity is started on the land, the same is transferred from the fixed assets/advances and shown as purchase in the P&L account during the year of commencement of the project.

It is to be worthwhile mentioned here your honour that the assessee company has purchase agriculture land from farmers who are mainly resident of village and at time they need some cash and looking to the business expediency and other relevant factors the assessee company has no option but to make the payment in cash as per their request, otherwise, there is all possibility the assessee company may lose the land transaction.

The assessee company has tried to make maximum payment only by account payee cheque though the transactions are in respect of agricultural land and at a place where banking

facilities are not very popular or available at a very distance place in nearby village. The assessee after taking into consideration of the business expediency and to materialize all the transactions and other relevant factor in totality has made the payment in cash. In fact assessee has absolutely no option to make the payment otherwise than cash.

The payment made by cash was only on the request of vendor and not with any intention of evasion of taxes. Hence we request your honour that these additions made by the AO be deleted as these additions are not only bad in law but will also bring financial hardship on the assessee.

Similarly during the year under consideration the assessee company has also shown an agricultural income of Rs. 7,67,600/- and claimed as exempted under section 10 of the Income Tax Act 1961. During the course of assessment proceeding the assessee has also submitted that during the year under consideration, the assessee has earned net agricultural income amounting to Rs. 7,67,600/-. The assessee carried out agricultural activities on its various land admeasuring about 51.10 acres, situated at Mouza Sukli, Dorli, Dahegaon, Borgaon, Chikhali, Chicholi, Taluka - Kalmeshear and Hingna & Nagpur. On the agricultural land, crops of Soyabeen, Tur, Cotton, Wange, Muli, Mirchi, etc. have been cultivated by the assessee. The assessee has also paid land revenue to Government on the said land in respect of agriculture produce. The land on which agricultural operations are carried out is well irrigated through bore wells & wells. The assessee has declared income from Agricultural activity amounting to Rs.7,67,600/- from 51.10 acres of land, which is very much reasonable.

However the learned A.O. has not accepted the information and explanation given by the assessee and 50% of the agricultural income i.e. Rs. 3,83,800/- has been added to the

income of the assessee by treating the same as income from other sources."

3. When the matter was carried before the Id. CIT(A), he proceeded to adjudicate in the following manner:

"h) The argument that Section 40A(3) of the Act deals with only deductions dealt with under the sections 30 to 37 of the Act and that cost price of goods is covered by Section 28 of the Act and hence Section 40A(3) of the Act will not apply, was rejected by several Hon'ble High Courts. It was laid down that the expression 'expenditure' used in Section 40A(3) of the Act should not be given too narrow a meaning to restrict it from applying to payments for purchase of goods and that to give such a narrow interpretation to the expression 'expenditure' and to exclude from its meaning, payments made for goods purchased, is to make it difficult for the revenue to properly investigate the payments; to open the door wide to allow evasion and thus to defeat the very object which the provision was designed to achieve. The authorities are as below:

- i) CIT VS Grewal group of Industries (P&H) 110 ITR 278*
- ii) U.P. Hardware Store Vs CIT (All.) 104 ITR 664*
- iii) CIT Vs Kishan Chand Maheshwari Dass (P&H) 121 ITR 232*
- iv) Sajowanlal Jaiswal Vs CIT (Ori.) 103 ITR 706*
- v) Hari Chand Virender Paul Vs CIT (P&H) 140 ITR 148*
- vi) Madhav Govind Dulshete v. ITO [2018] 99 taxmann.com 56/259 Taxman 149 (Bom.),*
- vii) Vaduganathan Talkies v. ITO [2020] 120 taxmann.com 25/275 Taxman 599/428 ITR 224, (Madras HC)*
- viii) Nam Estates (P.) Ltd. v. ITO [2021] 123 taxmann.com 218/277 Taxman 169/[2020] 428 ITR 186 (Kar.)*
- ix) Bagmari Tea Co. Ltd. v. CIT [2002] 121 Taxman 143/[2001] 251 ITR 640 (Cal.)*

Particularly in last four judicial pronouncements cited above, Hon'ble High Courts have confirmed the disallowances where the payments were made in cash exceeding the threshold limit notwithstanding the genuineness of the transaction.

i) The appellant has cited the decision of Hon'ble ITAT in Vikrant Happy Homes Pvt. Ltd. vs DCIT, ITA No. 2856/PUN/2016 in support of its appeal. I have carefully perused the decision and in my humble opinion, the Hon'ble ITAT was not pleaded to consider Hon'ble Supreme Court's judgment in the case of Attar Singh Gurmukh Singh vs. ITO (1991) 59 taxman 11 (SC), State of Tamil Nadu vs. Kandaswamy AIR 1975 SC 1871 (para 26) and in the case of Hotel Balaji vs. State of AP AIR 1993 SC 1048 where the Hon'ble Apex Court had visited the section in its entirety. Similarly, pronouncements of Hon'ble different High Courts mentioned from i) to v) above have also not been cited before the Hon'ble ITAT in the case of Vikrant Happy Homes.

5.4.4. Considering the above facts and circumstances of the case as well as following ratio of Hon'ble Supreme Court in the several decisions cited above, I am of the opinion that there is no infirmity in disallowance of Rs.23,73,000/- made u/s 40A(3) of the Act and therefore, the ground No. 1 and 2 of the instant appeal are dismissed.

5.5.1. Ground No. 3 of the appeal is pertaining to the addition of Rs.4,50,800/- as inadmissible agricultural income. I have carefully perused the order of the AO as well as submission of the appellant. The fact of the matter is, the appellant had declared agricultural income of Rs.9,01,600/- and claimed the same as exempt u/s 10 of the Act. The appellant claimed that it owns several lands (admeasuring 51.10 acres) situated at different places apparently in vicinity of Nagpur. The appellant claimed to have grown soyabin, tur, cotton, brinjal, radish, chillies etc.

The other argument of the appellant is that there are borewells and wells and hence the evidence of irrigation of land.

5.5.2. The appellant's argument is not disputed in the assessment, to the extent of ownership of land, agricultural activity having been carried out as well as availability of irrigation facility and payment of land revenue. The AO had, rightfully, had asked supporting documents in the form of "details of expenses incurred regarding agricultural activity and sale bills of agricultural income". The AO has noted that "the ownership of agricultural land may not be in doubt". The AO has also observed that the AR of the assessee (appellant) had admitted unavailability of details of expenses incurred regarding agricultural activity and sale bills of agricultural income required during the assessment proceedings.

5.5.3. The facts and circumstances of the case suggest that the most of the crops purportedly grown and sold by the appellant are cash crops. The land is apparently located in vicinity of Nagpur city/district. The appellant also appears to be a corporate entity and not a wretched illiterate farmer. The AO was right in seeking verification of claim of agricultural income in scrutiny proceedings. Faced with admission inability on the part of the appellant to demonstrate any evidence to satisfy the AO about the genuineness of its claim of agricultural income, disallowance to the extent of 50% of agricultural income's claim seem to be justified. During the appellate proceedings also, besides the arguments cited in para 5.5.1, no material evidence has sought to be admitted. I therefore, dismissed the ground No. 3 of the appeal."

4. In the course of hearing before us, the Id. AR vehemently submitted that the addition under section 40A(3) of the Income Tax Act, 1961 (the Act) is not warranted because there is doubt about the

genuineness of the payment and further the same has not been claimed as expenditure. We find that Nagpur Tribunal in the case of **Raghav Agritech v/s Income-tax Officer [2025] 215 ITD 647/10 taxmann.com 93 (Nagpur-Trib.)** has held as follows:

"8. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. It is important to extract below the provisions of section 40(a)(ia) of the Act.

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

(a) in the case of any assessee-.....

(ia) thirty per cent of any sum payable to a resident, 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 on or before the due date specified in sub-section (1) of section 139:'

9. *It is a trite law that only expenditure which are otherwise allowable under sections 30 to 38 of the Act can be disallowed for non-deduction of tax at sources when it is undisputedly a capital expenditure and not claimed as a deduction while computing income from projects and gain of business and profession, there cannot be any disallowance in the intimation under section 143(1)(a) of the Act. Hence there is no merit in the order passed by the learned CIT(A) which is hereby set aside and the grounds of appeal raised by the assessee are allowed.*

10. *In the result, appeal filed by the assessee is allowed."*

5. Albeit the decision is rendered in the context of Section 40(a)(ia) and not section 40A(3) but the crucial point to be noted that

they fall within the ken of section 40. The expenses otherwise deductible is settled by the rigorous conditions circumscribed. Hence, the decision is quite apposite to the present adjudication.

6. Moreover, the Id. AR has also submitted that even though the exemption under Rule 6DD may not be strictly applicable nevertheless the commercial expediency cannot be ignored.

7. Per contra, the Id. Sr. DR relied upon the orders of lower authorities. It is a trite law that whens the assessee has not claimed the impugned sum as an expenditure that cannot be any question of disallowance because the same has not been reduced while calculating the profit, hence that entire disallowance of ₹. 21,58,000/- is directed to be deleted. As regards Ground no. 4 in treating the income from agriculture under the head "Income from Other Sources". The Id. AR in all fairness submitted that it is a revenue natural exercise for a company because both the income are taxable at the maximum marginal rate, hence, he pleaded that he is not very serious in pressing the ground so, the ground is dismissed. Accordingly the appeal is partly allowed.

ITA No. 626/Nag/2024

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

"1. That, on the facts and circumstances of the case, the order passed by the Ld. CIT(A) is bad in law, void ab initio, and unjustified.

2. That, on the facts and circumstances of the case, the Ld. A.O. has erred in law as well as in the facts on making and the Hon'ble Ld. CIT(A) erred in confirming the addition of Rs. 23,73,000/- u/s 40A(3) of the I.T. Act, 1961 on account of the disallowance of the amount paid by the assessee for the purchase of land by ignoring the explanation and documents given during the course of appellant proceedings.

3. That, on the facts and circumstances of the case, the Ld. CIT(A) has erred in interpreting the provision envisaged u/s 40A(3) of the I.T. Act, 1961.

4. That, on the facts and circumstances of the case, the Ld. A.O. has erred in law as well as in the facts on making and the Hon'ble Ld. CIT(A) erred in confirming the addition of Rs. 4,50,800/- by not accepting the income from agriculture and treating the same under the head income from other sources by ignoring the explanation and documents given during the course of appellant proceedings.

5. That, in the facts and circumstances of the case, the Ld. CIT(A) ought to have appreciated that the value adopted by the Stamp Valuation Authority did not exceed 110% of the consideration in the case of the transfer deed in favor of Vaidya Venkatesh.

6. That, in the facts and circumstances of the case, the Ld. CIT(A) erred in not referring the matter to the Departmental Valuation Officer (DVO) to ensure a fair and accurate assessment in case of the transfer deed executed in favor of Jayesh Hariramani Omprakash and Smt. Pramila Ingle for making an addition of Rs. 3,75,000/-.

7. That, on the facts and circumstances of the case, the interest charged u/s 234A, 234B and 234C of the Income Tax Act 1961 is excessive, unreasonable, and unjustified."

9. Ground No. 2 is allowed considering the detailed observations, we have made in ITA No. 625/Nag/2025.

10. Ground no. 4 is dismissed in line of the above. As regards Ground No. 5 concerning the difference in the valuation between the stamp duty valuation and the sale consideration, the difference is less than 10%. The Id. CIT(A) has dismissed the ground holding as follows:

"05.8.7. The appellant has submitted by way of additional grounds an explanation with regard to transaction with 'Vaidya Venkatesh' and claimed that difference amount did not exceed 110% of the consideration and protested the addition. I have carefully perused this argument also which is found untenable because threshold of 110% has been substituted w.e.f. 01.04.2021 vide Finance Act, 2020. Before such substitution this, the threshold limit was 105% which is for the period applicable in the instant case and difference of amount is Rs.35,000/-i.e. difference between valuation by the stamp duty authority vis-à-vis sale consideration received as per the appellant and it works out to be 105.83% of the stamp duty value of Rs.6,00,000/-. Also, Hon'ble ITAT, Mumbai in the case of Welfare Properties (P.) Ltd. vs. Deputy Commissioner of Income-tax, Mumbai [2020] 113 taxmann.com 156 (Mumbai - Trib.)(29-11-2019) has held that;

"Prior to incorporation of proviso to section 43CA(1), vide Finance Act, 2018, with effect from 1-4-2019, there was no tolerance limit envisaged in section 43CA, regarding difference between stamp

duty value and actual sale consideration received by assessee on transfer of asset (other than a capital asset)”

11. However, the Hon'ble Mumbai ITAT in the case of Joseph Mudaliar v. DCIT [2021] 130 taxmann.com 250 (Mumbai-Trib.) has held that Amendment made in section 50C(1) of the Act by inserting third proviso by Finance Act, 2018, with effect from April 01, 2019 is curative in nature and same would apply retrospectively.

12. Following the above jurisprudence the addition of ₹. 35,000/- is directed to be deleted.

13. As regards Ground no. 6, wherein the addition of ₹. 3,75,000/- has been made by not referring to the matter to the District Valuation Officer (DVO), the Id. AR in all fairness duly submitted that he has no objection if the matter is so now referred.

14. Per contra, the Id. Sr. DR duly submitted that he has no objection if the valuation exercise is carried out. Accordingly this ground is allowed.

15. In the result, the appeal of assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 24/02/2026

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Sd/-
KHETTRA MOHAN ROY
ACCOUNTANT MEMBER

Nagpur, dated 24/02/2026

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Nagpur; and*
- (5) Guard file.*

*SK, SR. PS
Sr. Private Secretary*

By Order

Sr. Private Secretary
ITAT, Nagpur