

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1694/Bang/2013
Assessment year : 2010-11

The Dy. Commissioner of Income-tax, Circle-1, Hassan.	Vs.	Shri B.N Ramachandra (HUF), Byramudi Estate, Mattada Gaddem Udayavara Post, Sakaleshpura Taluk, Hassan Dt. PAN :AAHNB 9087 R
APPELLANT		RESPONDENT

Assessee by	:	Shri V Srinivasan, Advocate
Revenue by	:	Smt. Priyadarshini Besaganni, CIT (DR)

Date of hearing	:	14.06.2023
Date of Pronouncement	:	07.07.2023

ORDER

Per Beena Pillai, Judicial Member

The present appeal arises out of order passed by Hon'ble Karnataka High Court dated 23/08/2022 dated 23/08/2022 in ITA No.889/2017.

2. The *Hon'ble High Court* framed following questions of law:-

"1. Whether the Tribunal was justified in law in holding that the amount of compensation, expenditure incurred

wholly in connection with the transfer, paid to the tune of Rs.3.27 Crores is not deductible under section 48 of the Income Tax Act, 1961 and consequently passed a perverse order on the facts and circumstance of the case.

2. Whether the Tribunal erred in holding that the amount of Rs. 2.5 Crores received by the registered power of attorney holder is to be taken into account for the purpose of determination of the full value of consideration under section 48 of the Act and consequently passed a perverse order on the facts and circumstance of the case. "

3. The Hon'ble High Court after relying on the following facts decided the first question of law in negative i.e in favour of the assessee.

"2. Brief facts of the case are, assessee along with one Shri Chethan A.Gandhi as the confirming party, sold land measuring 1 acre 16 guntas of land in Survey No.46/3, Dodda Bommasandra Village, Yelahanka Hobli, Bengalore North Taluk, in favour of MARS Builders, under sale deed dated 20.01.2020 for a total consideration of Rs.7 Crores.

Out of the said amount, a sum of Rs.2,50 Crores was paid to the confirming party, i.e., Shri Chethan A.Gandhi through a cheque, details of which are recorded in the sale deed(Annexure-G) .

3. The AO disallowed expenditure of Rs.3,86,40,000/- claimed by the assessee. There is no mention with regard to the sum of Rs.2.50 Crores paid to Shri Chethan Gandhi in the assessment order. Whilst the matter was under consideration before the CIT(A)3, the Assessing Officer wrote letter dated 04.09.2013 to the CIT(A) to add a sum of Rs.2.50 Crores paid to Shri Chethan Gandhi. The Commissioner held that payment was made to Shri Chethan Gandhi by a crossed cheque and assessee had no right on the said amount and held that the said amount could not be treated as consideration received by the assessee.

4. So far as expenditure of Rs.3,86,40,000/- disallowed by the AO, the CIT(A) held that a sum of Rs.3,27,00,000/- had been paid through cheques and accordingly confirmed disallowance to the extent of Rs.59,40,000/-.

5. Revenue challenged CIT(A)'s order before the ITAT'. The ITAT upheld payment of Rs.2.50 Crores to Shri Chethan Gandhi. So far as disallowance of Rs.3.27 Crores, the ITAT considered the list of payments recorded in page No.15 of it's order and allowed Revenue's appeal.

The resultant position is, payment of Rs.2.50 Crores made to Shri Chethan Gandhi was added as income in the hands of assessee and a sum of Rs.3.27 Crores claimed as expenditure by the assessee was disallowed.

6. Shri. A. Shankar, learned Senior Advocate for the assessee advertng to the sale deed pointed out that a sum of Rs.2.50 Crores was paid to Shri Chethan Gandhi directly through cheque No.548912 dated 20.01.2010 drawn on Shyam Rao Vittal Co-operative Bank Ltd. He submitted that it is recorded in the sale deed that assessee had executed a Registered General Power of Attorney in favour of Shri Chethan Gandhi and the land in question was under litigation since 1995.

Therefore, to settle the matter amicably, assessee had taken a conscious decision to pay Rs.2.50 Crores directly to Shri Chethan Gandhi.

7. With regard to disallowance of Rs.3.27 Crores, Shri Shankar has filed a synopsis containing a list of payments and pointed out that what is considered by the ITAT in it's order is an incorrect statement. According to him, all payments were made in the year 2010 and in the list contained in ITAT's order, the very same payments are shown to have been made in the year 2013.

8. With regard to certain payments said to have been made in the year 2013, Shri Shankar submitted that those payments were made in the year 2010 as per Syndicate Bank pass sheet and therefore the ITAT will have to re-examine the matter.

9. Shri M. Dilip, learned Standing Counsel for the Revenue submitted that Shri Chethan Gandhi was only a power agent. The property was not alienated in his favour nor possession of the property handed over to him. Therefore, entire sale consideration will have to be construed as receipt in the hands of the assessee.

10. With regard to disallowance of Rs.3.27Crores as expenditure claimed by the assessee, Shri Dilip submitted that the statement relied upon by the ITAT is the one which was made available by the assessee. Therefore, there is no need for remand.

11. We have carefully considered rival submissions and perused the records.

12. The first question of law is with regard to disallowance of Rs.3.27 Crores. The assessee has given a list stating that dates recorded in the cheques considered by the ITAT are all of the year 2010. The assessee has also produced bank pass sheet of Syndicate Bank from 01.01.2009 to 17.02.2011 as per Annexure-P to this appeal, wherein payment to one Shri Shivakumar is factually made on 21.01.2010 by way of two cheques, one for Rs.1 Lakh and other for Rs.15 Lakhs. The statement extracted by the ITAT contains 15 entries. Except entries No.5 & 6, all cheques are shown to have been drawn in the year 2013. Therefore, we are of the view that matter requires reconsideration in the hands of the ITAT.

13. The second question is with regard to payment of Rs.2.50 Crores to Shri Chethan Gandhi. We have carefully perused the sale deed. The sale deed contains a recital that assessee had executed a General Power of Attorney in favour of Chethan Gandhi, registered on 15.11.2007 in the office of the Sub-Registrar, Byatarayanapura, Bangalore. The CIT(A) has recorded in his order, the synopsis of the criminal case, which had commenced in 1995. The recital in the sale deed also shows that property belonged to assessee's family and one of the family members namely Umesh has gifted the property in favour of his wife and thus litigation had ensued.

14. Suffice to record that after conclusion of the litigation, the property has been sold. The relevant aspect is, the assessee had, in fact, given a power of attorney in favour of Shri Chethan Gandhi. The payment of Rs.2.50 Crore has been made to Shri Chethan Gandhi by cheque. The Assessing Officer has not addressed this issue. On the other hand, he has written a letter to the CIT(A) who has considered the case in the right perspective and not added Rs.2.50 Crores as income of the assessee. In our view, the ITAT has misconstrued the facts and held that the CIT(A) has allowed the deduction of Rs.2.50 Crores. This aspect is factually incorrect. We say so, because there is no reference in AO's order with regard to amount of Rs.2.50 Crores paid to Shri Chethan Gandhi. Though a letter was written by the Assessing Officer, the CIT (A) has not added that amount. Therefore, the finding recorded by the ITAT is perverse and unsustainable.

15. *It is settled that it is not for the tax authority to sit in the chair of assesseees and make commercial decisions. It is for the assesseees to take appropriate decision with regard to their transactions and property.*

16. *In view of the fact that registered sale deed clearly shows that the sum of Rs.2.50 Crores was paid to Shri Chethan Gandhi, we are persuaded to accept the argument of Shri Shankar and agree with the view taken by the CIT(A)."*

4. In so far as the second question of law is concerned, the *Hon'ble High Court* remanded the issue to this Tribunal by observing as under:-

"17. In view of the above, the following:

ORDER

i) Appeal allowed;

ii) Question No.2 is answered in favour of the assessee and against the Revenue; and

iii) The matter is remitted to the ITAT with a direction to re-examine the disallowance of Rs.327 crores with reference to the bank pass sheet. Therefore, question No.1 does not call for any answer."

4.1 Before us, the only issue that needs, which is remanded is in respect of disallowance made by the authorities on the expenditure amounting to Rs.3.27 crores.

5. The brief facts of the issue arises out of the records on this issue are as under:-

5.1 The assessee sold a property on 20/1/2010. claimed Rs.3.27 crores as expenditure towards the compensation paid out of the sale proceeds. It is noted that during the first round of proceedings, this *Tribunal* vide order dated 6/7/2017 denied the claim by observing

that most of the payments were made in the year 2013.

The relevant observations by this *Tribunal* are as under:-

“Grounds I & 2:

09. The Ld. DR had submitted that in para 3.12, the CIT (A) has dealt with these issues in the following manner:

3.12 I have gone through the details filed by the appellant. Admitted fact is that there are series of litigation represented by the various cases mentioned above on which the appellant has given detailed synopsis also. However, as could be seen from the details of payments only Rs.3,27,00,000/- is paid through cheques and Rs.59,40,000/- is claimed as land improvement which is in cash and the appellant could not substantiate anything on this count. After going through various litigation papers and also the settlement deed, I am of the view that the appellant has to be allowed as far as the payments in cheque are concerned. However, the balance Rs.59,40,000/- has no supporting evidences and hence the addition to the extent of Rs.59,40,000/- is confirmed and the balance is directed to be deleted.

The Ld. DR has drawn our attention to the chart filed by the assessee at pages 11 and 12 of the paper book, which is reproduced hereunder :

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SL. NO.	DATE OF RECEIPT	NAME OF THE PARTY	AMOUNT(Rs)	MODE OF PAYMENT	REMARKS
1	27.03.2013	Sri B.N. Ramachandra, S/o. Late Nanjegowda	59,40,000/-	Cash	Towards refilling of Land bearing Sy.No.46/3, Doddabommasandra Village, Yelahanka Hobli, Bangalore North Additional Taluk, by way of hiring vehicles and JCB and towards construction of compound walls, soil filling the area and other facilities to make the land appealable and fit for sale and to get a better price for the land.
2	27.03.2013	Sri H.M. Shivakumar	16,00,000/-	Cheque	Towards settlement of disputes in respect of land bearing Sy.No.46/3, Doddabommasandra Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore.
3	27.03.2013	Sri Chandrashekar Rai	15,00,000/-	Cheque	Towards brokerage charges for sale of property bearing Sy.No.46/3, Doddabommasandra Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore.
4	27.03.2013	K.V.R. Housing Society	15,00,000/-	Cheque	Towards brokerage charges for sale of property bearing Sy.No.46/3, Doddabommasandra Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore.
5	16.12.2010	Sri Santosh Kumar	20,00,000/-	Cheque	Towards development of Land bearing Sy.No.46/3, Doddabommasandra Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore.
6	16.12.2010	Sri Varadaraju	20,00,000/-	Cheque	Towards development of Land bearing Sy.No.46/3, Doddabommasandra Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore.

7	27.03.2013	Sri S.B. Murali	10,00,000/-	Cheque	Towards development of Land bearing Sy.No.46/3, Doddabommasandra Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore.
8	27.03.2013	Sri Sadashiva Bhandari	16,00,000/-	Cheque	Towards settlement of disputes in respect of Land bearing Sy.No.46/3, Doddabommasandra Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore.
9	27.03.2013	Sri Sudharshan	55,00,000/-	Cheques (3 Nos)	Towards settlement of disputes along with legal charges of Land bearing Sy.No.46/3, Doddabommasandra Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore.
10	27.03.2013	Sri Vasudeva Rao	40,00,000/-	Cheques (3 Nos)	Towards settlement of disputes along with legal charges of Land bearing Sy.No.46/3, Doddabommasandra Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore.
11	27.03.2013	Sri. Narasimhamurthy	20,00,000/-	Cash	Towards share of proceeds from the sale of land evidenced in the deed.
12	27.03.2013	Smt. Ganga	20,00,000/-	Cash	Towards share of proceeds from the sale of land evidenced in the deed.
13	27.03.2013	Smt. Gowri	40,00,000/-	cash	Towards share of proceeds from the sale of land evidenced in the deed.
14	27.03.2013	Sri Pradeep	20,00,000/-	cash	Towards share of proceeds from the sale of land evidenced in the deed.
15	27.03.2013	Smt Kavitha	20,00,000/-	cash	Towards share of proceeds from the sale of land evidenced in the deed.
Total			3,86,40,000		

On the basis of the chart :

i) It was submitted that the title document was executed on 20.01.2010 (sale deed), whereas all the payments mentioned herein above in the chart were paid after 20.01.2010 i.e after the transfer of land. Thus it was submitted that these payments made by the assessee cannot acquire the status of compensation as claimed by the assessee in the return of income.

ii) It was further submitted by the Ld. DR that the payments made at sl.nos.5, 6 and 7 were towards the development of land sold by the assessee to purchaser and similarly the payments at sl.nos.3 and 4 to Shri. Chandrashekar Rai and K V R Housing Society were towards brokerage charges, for the sale of the property. Further it was pointed out that the CIT (A) had wrongly mentioned that the only payment made in cash to the extent of Rs.59,40,000/-, on the pretext that it was made in cash. However, from a perusal of the chart, it is clear that besides the sum of Rs.59,40,000/-. An amount of Rs.20,00,000/ each - was also made in cash towards the share of the proceeds from sale of land to Shri. K. Narasimha Murthy, Smt. Ganga, Smt. N. Gauri, Shri. Pradeep and. Smt. Kavitha. On the basis of the above, it was submitted by the Ld. DR that the order of the CIT (A) is required to be recalled, being erroneous and without any basis.

10. On the other hand, the Ld. Counsel for the assessee had fairly submitted that besides the sum of Rs.59,40,000/-, an amount of Rs.20,00,000/ each was also paid in cash to Shri. Narasimha Murthy and others . However, it was submitted that the payments were made to the persons mentioned in the chart pursuant to the settlement recorded and the compromise entered as mentioned in the sale document. It was further stated that the payment was made towards the full and final settlement of the property and to make the title perfect as there were number of litigations, both civil and criminal going on. Therefore, the aforesaid payments were made by the assessee to the said persons mentioned in the chart (15 persons). The Ld. AR submitted that the order passed by the CIT (A) is required to be upheld.

12. We have heard the rival submissions and perused the material on record. As is clear from the sale deed,

relevant portion of which is reproduced elsewhere in this order, the sale deed was registered on 20.01.2010 and the return of income was filed by the assessee on 20.10.2011, claiming compensation as Rs.3,86,40,000/-. If we look into the chart filed before us, it is clear that except Rs.20 lakhs each paid by cheque dt.16.12.2010 to Shri. Santosh Kumar and Shri. Varadaraju, all other payments were made on 27.03.2013. Thus out of the amount of Rs.3,86,40,000/-, an amount of Rs.3,06,80,000/- were made through cheques or cash on 27.03.2013 . In our view once the payments were made on 27.03.2013, by the assessee either by cheque or by cash, we fail to comprehend how the assessee can claim the compensation in the return of income filed on 20.10.2011 for the sum of Rs.3,86,40,000/-. In our view, the compensation can. be claimed by the assessee for an amount already paid by the assessee prior to the registration of the sale deed. No evidence or document has been produced before us which shows that the compensation was paid prior to the registration of the document and all the payments reflected in the chart reproduced herein above were paid after the registration of sale deed, much after the filing of the return of income [except Rs.40,00,000/- (supra)]. Thus in our view, there was no reason much less palpable reason for the CIT (A) to grant any benefit of R.s.3,27,00,000/- to the assessee on the pretext that the same was paid by the assessee by a cheque. In our view the assessee is not entitled to any relief on this account also and accordingly ground nos 1 and 2 of Revenue are allowed.

5.2 Before us, the Ld.DR submitted that, payments were made through cheques which is evident from the recordings in para 3.3 of the ld.CIT(A) order. She, however, submitted that, only sum of Rs.1.20 crores was paid in cash for which, the Ld.DR submitted that the relief granted by the Ld.CIT(A) is based on wrong facts.

8. On the contrary, the Ld.AR has filed the details of money transferred to various parties by cheque. He submitted that only 5 persons were paid in cash amounting to Rs.20 lakhs and 40 lakhs, for which the sources of cash withdrawn have also been provided. He has filed following documents in support of his submissions:-

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Name of the Party	Bank Name	Cheque No.	Date	Amount	Cheque Compensation	Improvement	Total
H M Shivakumar	Syndicate bank	101786	21-01-2010	1,00,000.00			
H M Shivakumar	Syndicate bank	101785	21-01-2010	15,00,000.00	16,00,000.00	-	16,00,000.00
Chandrashekar Rai	Syndicate bank	102454	30-01-2010	15,00,000.00	15,00,000.00	-	15,00,000.00
KVR Housing Society -Brokerage	Syndicate bank	102456	30-01-2010	15,00,000.00	15,00,000.00	-	15,00,000.00
Santosh Kumar	Syndicate bank	979701	16-12-2010	20,00,000.00	20,00,000.00	-	20,00,000.00
Varadaraju	Syndicate bank	979702	16-12-2010	20,00,000.00	20,00,000.00	-	20,00,000.00
Vasudeva Rao	Syndicate bank	103263	20-02-2010	10,00,000.00			
Vasudeva Rao	Syndicate bank	978146	15-12-2010	20,00,000.00			
Vasudeva Rao	Syndicate bank	979704	28-12-2010	10,00,000.00	40,00,000.00	-	40,00,000.00
Sudarshan	Syndicate bank	102458	02-02-2010	20,00,000.00			
Sudarshan	Syndicate bank	103261	19-02-2010	5,00,000.00			
Sudarshan	Syndicate bank	978147	10-12-2010	20,00,000.00			
Sudarshan	Syndicate bank	979705	27-12-2010	10,00,000.00	55,00,000.00	-	55,00,000.00
S B Murali	Syndicate bank	102459	02-02-2010	10,00,000.00	10,00,000.00	-	10,00,000.00
Sadashiva Bhandari	Syndicate bank	102664	03-02-2010	11,00,000.00			
Sadashiva Bhandari	Syndicate bank	978149	10-12-2010	5,00,000.00	16,00,000.00	-	16,00,000.00
Pradeep Narasimha Murthy	CASH				20,00,000.00	-	20,00,000.00
Smt Ganga Narasimha Murthy	CASH				20,00,000.00	-	20,00,000.00
Smt Kavitha Narasimha Murthy	CASH				20,00,000.00	-	20,00,000.00
Smt Gauri Narasimha Murthy Others	CASH				40,00,000.00	-	40,00,000.00
Sri Narasimha Murthy	CASH				20,00,000.00	-	20,00,000.00
					3,27,00,000.00	-	3,27,00,000.00

Place: Bangalore
Date: 14/06/2023

Signature of the Assessee

Cash Drawn Ch No	Date	Amount
102452	28-01-2010	30,00,000.00
101789	29-01-2010	25,00,000.00
102453	29-01-2010	1,00,000.00
101790	29-01-2010	1,50,000.00
102666	05-02-2010	2,00,000.00
625313	26-10-2010	10,00,000.00
978133	20-11-2010	10,00,000.00
103264	25-10-2010	40,00,000.00
978131	20-11-2010	30,00,000.00
		1,24,75,000.00

Place: Bangalore
Date: 14/06/2023

Signature of the Assessee

5.3 The Id.AR also filed bank statement in support of the payments made vide cheque as well as cash withdrawals during the financial year relevant to assessment year under consideration. The Ld.AR further submitted that the details of confirmation that was submitted by the recipients were dated 2013, which was wrongly considered by this *Tribunal* as the date of payment. He

submitted that it was during the assessment proceedings that these details were called for from the parties and, therefore, the receipts are placed at paper book page no.13-25 are on various dates during that year. He thus, supported the order of the Ld.CIT(A) and prayed for the expenditure being allowed in the hands of the assessee during the relevant year under consideration.

5.4 On the contrary, the ld.DR filed following written submission in support of her arguments.

“1. The case came up for hearing on 14/06/2023. The case is remanded back to ITAT by the High Court to examine the claim of expenditure of 3.27 Crores.

2. The fact of the case is that appellant sold a property on 20.01.2010 and claimed an amount of Rs. 3.27 Crores as expenditure towards compensation paid out of Sale proceeds. This amount was not allowed by the earlier ITAT order dated 06.07.2017 in ITA No. 1694/Bang/2013 on the pretext that most of the payments were made in the year 2013. Whereas, the counsel for appellant argued before the High Court that the payments were made in the year 2010 and not 2013. The Hon'ble High Court remanded the matter back to ITAT to examine the fact as to the payment made of Rs. 3.27 Crores.

3. Before the CIT(A), the appellant had claimed that all the payments were made through cheques which is evident in Para 3.3 in Page No. 14 of CIT(A) order. However as per the table, Rs. 1.20 Crores was paid in cash out of Rs. 3.27 crores. Therefore, the relief given by the CIT(A) was on a wrong fact claimed.

4. During the course of hearing on 14/06/2023, the Ld. AR argued that most of the payments were made in the year 2010. The year 2013 mentioned in the table, was the date of confirmation and not the dates of payments. In support of his claim, he produced Syndicate Bank pass book with account no. 042--6080 for the period of 01.01.2009 to 17.02.2011. Further, with regard to cash payments, the Ld. AR relied on the confirmations produced by the said recipients.

5. The undersigned raised objection for considering the confirmations produced by the said recipients as sufficient evidence to allow the claim of compensation paid in cash.

6. After hearing both the sides, the Hon'ble Bench directed the Ld. AR to produce the following:

(i). The proof of existence of litigation by the persons who acknowledged receipt of cash.

(ii). Synopsis of payment made of Rs. 3.27 crores.

(iii). Source of Cash and Synopsis of Cash payments.

7. In this regard, the Ld. AR has submitted a memo dated 14.06.2023 in my office on 15.06.2023 showing the details of all payments as claimed. With regard to source of cash, he has produced the date of withdrawal of cash amounting to Rs. 1.20 Crores. However, he has not provided anything to substantiate direction No. 1 i.e. Existence of the litigation by the recipients

of cash as on the date of sale deed.

8. In this regard, it is to submit that, during the course of the assessment proceedings, so called recipients of cash have produced confirmations dated 27/03/2013 wherein all the 05 persons have mentioned that they have received cash on particular date during certain day of FY 2009-10 Ft 2010-11 which is tabulated below for ready reference:

Sl. No.	Name	Date of confirmation	Date of receipt of cash as claimed	Amount of cash
1.	Shri Pradeep	27.03.2013	20.12.2010	20 Lakhs
2.	Shri Narasimhamurthy	27.03.2013	20.12.2010	20 Lakhs
3.	Smt. Ganga	27.03.2013	28.01.2010	20 Lakhs
4.	Smt. Kavitha	27.03.2013	28.01.2010	20 Lakhs
5.	Smt. Gowri	27.03.2013	25.10.2010	40 Lakhs

9. After careful examination, the following points are brought to the notice of the Hon'ble Bench:-

i. It is to be noted that the dates of receipt of cash in all the above case is after the date of sale deed i.e 20.01.2010. Whereas the sale deed was executed by the appellant on 20.01.2010, the claim of cash payments are after the sale deed. Hence, the same are not acceptable and liable for disallowance.

ii. It is to be noted that though the confirmations are given on 27/03/2013, all the above persons remembered the exact date of receipt of compensation in cash. It is highly conspicuous as to how they remember the exact date even after the lapse of around 03 years of time. Therefore, it is pleaded that the claim of cash compensation is an absolute bogus claim and a clear after thought to evade tax.

iii. Attention is brought to the Page No. 4 of 8 of the said sale deed in Document No. BNG(U)-BYP/3771-2009-10. In first paragraph it is mentioned that all the above mentioned parties have executed confirmation deeds in FY 2007-08 in favour of Shri BN Ramachandran. For ready reference, the paragraph of the above sale deed is reproduced as under:

"Whereas, In order to perfect the title to the scheduled property, the wife and children of Shri K Umesh namely Smt. N Gowri, Master Gagan Ganapathy and Kumari Suhana Saraswathi executed a confirmation deed dated 17.08.2007 registered on 20.09.2007 vide doc no. BYP- 1 -02050-2007-08 in Book 1 stored in CD No. BYPD8 in the office of the sub registrar Byatrayanapura, Bangalore and the wife and children of Shri K Narasimhamurthy namely Smt. Ganga, Kumari Kavitha and Shri Pradeep also executed a confirmation deed dated 17.08.2007 registered on 27.08.2007 vide doc no, BYP-1-01776-20072008 in Book-1 in CD No. BYPD 6 in the office of sub registrar Bytarayanpura Bangalore and that Shri K Narasimhamurthy has also signed as one of the witness in the sale deed, thus confirming the sale deed dated 06. 12.2004 executed by Shri K Umesh in favour of Shri BN Ramachandra and also stated that they do not hold any right, title and interest over the schedule property."

iv. As the above parties have already executed confirmatory deeds that they do not have any right over the scheduled property in FY 2007-08 itself, the question of receiving cash towards the so claimed litigation subsequently in FY 2009-10 I. 2010-11 do not arise. It is to be noted that Shri K Narasimhamurthy has been the witness when his brother Shri Umesh has transferred the property to the appellant. All these goes to show that there was no litigation as on the end of the FY 2007-08 and there is no question of paying compensation later in FY 2009-10 Et 2010-11.

10. Therefore, the Hon'ble ITAT is requested to disallow this claim of cash compensation paid to above 05 persons. Without prejudice to the above, if the Hon'ble Bench is to take an adverse view, the matter may be remanded back to the AO for detailed verifications of the points mentioned by the undersigned in this written submission.

11. The Hon'ble Bench is requested to take the confirmation deeds executed by the above 5 persons in the FY 2007-08 as evidence of non-existence of litigation beyond 2007-08 and pronounce the decision that the claim of cash receipts of Rs. 1.20 Crores by the above persons is bogus and hence the same is not allowable in the hands of the appellant. The above submission may be considered with regard to the case pending as well as the reply to the memo of the Ld. AR dated 14/06/2023 submitted in our office on 15/06/2023.

12. With regard to the cheque payments also, all the payments are subsequent to the date of registration. Therefore, ITAT may be pleased to disallow the same as per its earlier order dated 06.07.2017.

13. To conclude, the claim of compensation paid of 3.27 Crores may be disallowed based on the facts and merits as discussed above. Such a judgement may be rendered in the interest of Revenue, Justice, Fairness & Truth. “

5.5 In the written submission filed by the ld.DR, she is disputing the cash payments made by the assessee to 5 parties. The details of which are as under:-

Sl. No.	Name	Date of confirmation	Date of receipt of cash as claimed	Amount of cash
1.	Shri Pradeep	27.03.2013	20.12.2010	20 Lakhs
2.	Shri Narasimhamurthy	27.03.2013	20.12.2010	20 Lakhs
3.	Smt. Ganga	27.03.2013	28.01.2010	20 Lakhs
4.	Smt. Kavitha	27.03.2013	28.01.2010	20 Lakhs
5.	Smt. Gowri	27.03.2013	25.10.2010	40 Lakhs

6. We have heard the submission advanced by both sides. It is admitted fact that all the above 5 parties who received cash have produced confirmations during the assessment proceedings. From the written filed by the ld.DR, we note that the doubt that arose in the mind of revenue is that the cash was paid to 5 parties on 20/12/2010, 28/1/2010 and 25/10/2010, whereas, the date of sale deed was on 20/01/2010. Merely because these parties have executed confirmatory deeds in favour of assessee relinquishing rights over the scheduled property during the financial year 2007-08, the argument of the Ld.DR that, the subsequent event of cash paid to 5

parties during financial year has to be disbelieved cannot be accepted. There is nothing on record with the revenue to advance such argument.

6.1 Further, we note that the transaction has not been disbelieved by the revenue as the Ld.DR did not argue on the cheques payments made by the assessee to various parties which are also confirming the receipts as compensation paid by the assessee.

6.2 In counter to the written submission filed by the ld.DR, we note that the ld.CIT(A) in paragraph 3.2 – 3.3 observed in detail regarding the payment of compensation that arose out of litigation being criminal case No.1427/95 case No.OA 6965/2006 and Case No.RRT/DS/15/2005-2006. The ld.CIT(A) observed as under in para 3.3.

“3.3 The appellant filed all the relevant details which were filed before the AO. The appellant also gave Advocates and paid through cheque to the tune of 23,27,00,000/- and the balance 259,40,000/- was claimed as land improvement. It is pleaded that with the well wishers and other Panchayat Members, the appellant was able to see the light on the long litigation. Hence, all the claimants which are shown directly or indirectly involved in solving the said long pending litigation both Civil and criminal the payments were made by the appellant directly and indirectly on instructions of Mr. Narasimhamurthy. In light of the compromise entered into between the parties in the said cases they have agreed that as per the para 8 of the page 2, the sale proceeds shall be shared among themselves in the ratio of 25% to Mr. Narayana Reddy, 45% to Mr. Narasimhamurthy and Ors and 30% to Venugopal Ganne with the intervention of well wishers and elders and accordingly settled the amounts which are paid mostly in cheque. Under these circumstances, it is pleaded in the interest of equity of fair play after

going through the contents and the nature of the litigation, his claim should be allowed.”

6.3 Further, the AO in the remand proceedings has also recorded that, the reasons for disallowance of compensation is not forthcoming from the assessment records. Further from the bank statement filed before us cash payments made by the assessee could be established as the assessee has drawn cash as recorded therein. The scanned bank statement is placed at para 8 in the preceding paras. The ld.DR had requested for a remand in the written submission. In our opinion no purpose will be served as there is nothing placed on record that give raise to any suspicion and the submission of the ld.DR is based on surmise alone. We, therefore reject this plea of the ld.DR.

6.4 In our view the assessee explained the reasons for making such compensation to various parties with documentary evidences. It is clear that all the payments have been explained by the assessee that was made during the relevant year under consideration, that arose out of long drawn litigation. Based on such observations the disallowance was deleted by the Ld.CIT(A). We, therefore, do not find any infirmity in the action of the ld.CIT(A) up hold in the deleting the addition of Rs.3,86,040,000/- in the hands of the assessee.

6.5 From the above discussion, we do not find any reason to interfere with the view taken by the ld.CIT(A). We, therefore, direct the Ld.AO to delete the disallowance made in the hands of the assessee amounting to Rs.3,86,040,400/-.

Accordingly, the question of law remanded to the Tribunal by the Hon'ble High Court is allowed in favour of the assessee.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in court on 7th July, 2023

Sd/-

Sd/-

(CHANDRA POOJARI)

(BEENA PILLAI)

Accountant Member

Judicial Member

Bangalore,

Dated, 7th July, 2023

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.