IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)

I.T.A. No.2155/Del/2015 (A.Y 2005-06)

USG Buildwell Pvt. Ltd. M-11, Middle Circle, Connaught Circus, New Delhi AAACU4507B **(APPELLANT)**	Vs	Additional Commissioner of Income-tax Central Circle-32, New Delhi **(RESPONDENT)**

I.T.A. No.1351/Del/2015 (A.Y 2006-07)

USG Buildwell Pvt. Ltd. M-11, Middle Circle, Connaught Circus, New Delhi AAACU4507B **(APPELLANT)**	Vs	Deputy Commissioner of Income-tax Central Circle-32, New Delhi **(RESPONDENT)**

Appellant by	**Sh. Piyush Kaushik, Adv & Sh. Ajay Bhagwani, CA**
Respondent by	**Sh. Satpal Gulati, CIT DR**

Date of Hearing	**02.02.2021**
Date of Pronouncement	**12.03.2021**

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against order dated 21/11/2014 & 30/12/2014 passed by CIT(A)-XXX, New Delhi For Assessment Year 2006-07 & 2005-06 respectively.

2. The grounds of appeal are as under:-

I.T.A. No.2155/Del/2015 (A.Y. 2005-06)

"1. That on the facts and circumstances of the case and in law, no incriminating documents having been seized in the course of search u/s 132 on 07.12.2010 on the assessee, the addition of Rs.30lacs was not permissible in the assessment made u/s 153A of the Act and the income declared and assessed on 27.02.2006 u/s 143(1) at Rs.2,71,770/- ought to have been accepted.

2. That without prejudice, the order passed by the Assessing Officer, and confirmed by CIT(A), is bad on facts and in law in as much as it suffers from the vice of violation of the principles of natural justice and denial of opportunity of being heard, rendering the assessment void ab initio.

3. That without prejudice on the facts and circumstances of the case and in law the CIT(A) erred in confirming the addition of Rs.30,00,000/- as income from undisclosed sources.

4. That the orders passed by the Assessing Officer and Commissioner of Income

Tax (Appeals)-XXX, New Delhi are bad in law and void ab initio."

I.T.A. No.1351/Del/2015 (A.Y. 2006-07)

"1. That the orders passed by the Assessing Officer and Commissioner of Income Tax (Appeals)-XXX, New Delhi are bad in law and void ab-initio.

2. That the CIT(A) erred in utilizing the material seized in the course of search on BPTP group of cases (excluding appellant) on 15.11.2007 which did not belong to the appellant.

2.1 That on the facts and circumstances of the case and in law the CIT(A) has erred in holding that wherever the date of PDCs are extended, interest is to be taken to have been paid @ 15% p.a in cash outside the books of account and is to be treated as undisclosed income.

2.2 That no enquiries were made from any of the alleged recipients of the interest and none was confronted with the relevant document(s).

2.3 That the addition was unwarranted being based merely on surmises and conjectures without proof and corroboration by independent evidence.

3. That on the facts and circumstances of the case and in law the CIT(A) erred in not accepting the appellant's contention that Additional Payments having not been claimed as deduction by appellant, no disallowance could have been made in the hands of the appellant.

3.1 That without prejudice the CIT(A) erred in upholding the disallowance of Additional Payments made to the recipients who were not the owners of land and to the payment made in cash.

3.2 That without prejudice the CIT(A) erred in not himself quantifying the addition to be made.

4. That on the facts and circumstance of the case and in law the CIT(A) erred in sustaining the disallowance of Rs.408,490/- u/s 40A(3) of the IT Act despite the ract that no deduction in respect of said sum was claimed in the computation of income from business.

4.1. That on the facts and circumstance of the case and in law the CIT(A) erred in confirming the disallowance u/s 40A(3) of Rs. 4,08,490/- despite the fact that similar disallowance made under similar circumstances was deleted by ITAT vide order dated 22.08.2014 in ITA No. 1752/Del/2013 in case of M/s Westland Developer Pvt. Ltd. for the Assessment Year 2006-07 being a group company copy of which order was filed before the CIT(A) and whose facts were akin to the facts of the appellant company.

3. Firstly we are taking the appeal for A.Y. 2005-06. A search and seizure operation was carried out at the various premises of M/s BPTP Ltd. and its group concerns and associated person on 7/12/2010 and finally concluded on 5/2/2011. The assessee is a company incorporated under Companies Act, 1956. It had filed its original return of income for Assessment Year 2005-06 declaring total income at Rs.2,71,770/- on 30/10/2005. On 11/1/2012, the Assessing Officer issued a notice u/s 153A of the Act. In response to said notice, return was filed on 23/1/2012 declaring the total income at Rs. 2,71,770/-. The Assessing Officer issued a show cause notice dated 1/3/2013 in which the Assessing Officer raised a query related to the statement of Shri Suresh Kumar Gupta wherein certain accommodation entry to the assessee

company was depicted. The Assessing Officer observed that the sum of Rs. 30,00,000/- was received as accommodation entries and asked the assessee to establish the identity and creditworthiness of these creditor and genuineness of transaction u/s 68. The assessee filed its submission and details before the Assessing Officer. After taking cognizance of the same, the Assessing Officer made additions of Rs. 30,00,000/- which was credited by the assessee in its books of accounts in the form of sale of investment to M/s Namrata Marketing Pvt. Ltd. during Financial Year 2004-05 and treated the same as the deemed/undisclosed income of the assessee u/s 68 of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A) . The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that a sum of Rs. 30,00,000/- was received by way of sale of shares of M/s Alliance Buildcon (India) Pvt. Ltd. to M/s Namrata Marketing Pvt. Ltd. and sale proceeds were received by cheque from M/s Namrata Marketing Pvt. Ltd. The said shares were allotted to the assessee company in preceding year on 30/03/2003 by making payment through cheque. The copies of the share certificates were filed before the Assessing Officer for reference. Therefore, the source of amount is traced back to the preceding year and credit during the year is nothing but redemption of earlier investment. During the assessment proceedings the assessee filed detailed reply and submitted that since the said sum was received on account of sale of investment, the same cannot be held as undisclosed income under Section 68 of the Act. The Ld. AR submitted that notice u/s 148 was not served at the time of search. Thus, the Ld. AR submitted that the Assessing Officer as well as the CIT(A) has not taken a proper cognizance of the assessee's claim and made additions. Thus, the Ld. AR prayed that the addition be deleted.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that no incriminating material was found during the search and seizure in respect of assessee company, hence the decision of the Delhi High Court in case of Kabul Chawla is squarely applicable in the present case. The Hon'ble Delhi High Court held as under:

"Summary of the legal position

37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those

pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

Conclusion

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07.On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."

Since no incriminating material was found in the assessee's case, no addition can be made in the present case. Besides this, the assessee has made investment in prior period and sold the said investment in this particular year which was clearly set out from the submissions and the evidences produced before the Assessing Officer and the CIT(A). Therefore, the appeal of the assessee being ITA No. 2155/Del/2015 for Assessment Year 2005-06 is allowed.

8. Now we are taking up appeal being I.T.A. No.1351/Del/2015 for A.Y. 2006-07. The assessee is a group company of BPTP Ltd, which is the flagship company, engaged in the business of real estate development. A search was conducted on M/s BPTP Ltd on 07.12.2010 including the assessee. A notice was issued u/s 153A on 11.01.2012 in response to which return was filed on 30.01.2012. The present assessment was made u/s 153A of the Act after making following additions/ disallowances:-

i) On account of interest on PDCs of Rs.9,81,326/-
ii) On account of disallowance u/s 37(1) on additional payment of Rs.5,92,250/-
iii) Disallowance u/s 40A(3) of Rs.4,08,490/-

9. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

10. The Ld. AR submitted that Ground No.1, 2, 2.1, 2.2 & 2.3 and 5 are not pressed. Hence, Ground No. 1, 2, 2.1, 2.2, 2.3 and 5 are dismissed.

11. The Ld. AR submitted that as regards to Ground No. 4 and 4.1 (Assessee's Appeal) against the disallowance u/s 40A(3) - Rs.4,08,490/-, the assessee had purchased land and made part payment of Rs.4,08,490/- in cash. The development rights in land purchased were assigned in favour of M/s Countrywide Promoters Pvt. Ltd pursuant to Collaboration Agreement entered into with them. The assessee has received reimbursement of all amounts paid related to transaction of purchase of land. Stamp Duty. Registration charges etc., as per clause 3(b) of Collaboration Agreement. An agreement was entered into on 15.09.2004 between assessee and M/s Countrywide Promoters Pvt. Ltd (hereinafter CWPP). Based on the agreements, the Assessee showed the income by way of fees @ Rs. 35000/- per acre in the year in which license on said land was received. The Ld. AR submitted that the CIT(A) is totally incorrect in stating that it is difficult to accept the AR's contention that the cost of land is reimbursed by CWPPL. In stating so the CIT(A) totally ignored the fact that para 3(b) of the collaboration agreement clearly shows that CWPP shall reimburse all costs and expenses incurred by the aseessee with respect to the acquisition of said land. In the books of account maintained contemporaneously the sum received from CWPP was shown as reimbursement. The books of accounts are duly accepted by the lower authorities and CIT(A) are not rejected. What the CIT(A) has done is to

brush aside the terms of agreement and the fact that the terms of agreement were carried out and that reimbursement was actually made. In disregarding the above evidence the CIT(A) has unfortunately doing nothing but to rewrite the agreement, which as referred to above, is not permissible by him as a taxing authority, it is not necessary to dwell further on this evident matter. The Ld. AR further submitted that the CIT(A) is wrong and incorrect in stating that assessee was 'engaged in the business of development of real estate[1]. Para 1 of the Addendum clearly shows that CWPP shall share 100% of built up area and assessee shall have no right in the FSI. The AO has accepted these books of accounts are not rejected by AO. On these facts, the CIT(A) is totally wrong in stating that assessee is carrying on or engaged the business of development of real estate. It is plain that assessee, not being entitled to any income from the development or real estate, cannot in anyway be said to be carrying on or engaged in the business of development of real estate. The CIT(A) is wrong in stating that the receipts towards cost of land from CWPP are revenue receipts in the hand of the assessee. The CIT(A) has ignored the fact that receipts from CWPP towards the cost of land were not the trading receipts of the assessee but were reimbursement of cost incurred by the assessee with respect to the acquisition of the said land as per para 3(b) of the agreement (Page 8 of Paper Book). To say that it is the trading receipt again amounts to rewriting the agreement between the assessee and CWPP. /As stated, the courts, including the apex court, have frowned upon the attempt of taxing authorities to rewrite the agreement in the garb of interpreting the same. The CIT(A) has also erred in ignoring the settled legal position that a reimbursement under no circumstances can be regarded as revenue receipt as held in-

(I) CIT vs. Tejaji Farasram Kharawala 67 1TR 95 (SC) and

(ii) The jurisdictional High Court in CIT vs. Industrial Engineering Projects Pvt. Ltd. 202 ITR 1014 (Delhi).

These judgments were referred to, but the CIT(A) skirted to deal with them.

More recently Hon'ble Bombay High Court in DI(international Taxation) i/s. Krupp Udhe GMBH 354 ITR 173 (Bombay) following Delhi High Court judgment in Industrial Engineering projects (P) Ltd (supra), have held that reimbursement of expenses would not be liable to be included in income. To conclude a reimbursement can never be a trading receipt. The Ld. AR submitted that the CIT(A) is equally wrong in holding that the cost of land is expenditure in appellant's hand. Here again the CIT(A) ignored the settled position as to what constitutes " expenditure." The Ld. AR relied upon the decision of Hon'ble Supreme Court in case of General Insurance Company of India Ltd vs. CIT 2401TR 139(SC) the court explained the term expenditure. In the present case, the cost of land is not incurred out of assessee's pocket, and more importantly is not something which has gone irretrievably. After it is incurred it is reimbursed to the assessee. Hence, the same does not have the attributes of "expenditure". Further in Attar Singh Gurmukh Singh 191 ITR 667 (SC), expenditure was held to mean which have been taken into account while determining the profit u/s 28, and purchase of stock-in-trade is one such outgoing which would be covered by the word expenditure. In the present case, cost of land cannot be taken into determining profit u/s 28 nor for acquisition of stock-in-trade. The Ld. AR also submitted that the decisions in case of Tuticorin Alkali Chemicals & Fertilizers (supra) and CIT vs. Sun Engg Works Pvt. Ltd 198 ITR 297 (SC) are not applicable in present case. In the present case, the CIT(A) has challenged the accounts and has in effect rewritten them himself by casting a trading and profit and loss account. The action of the CIT(A) as stated supra is based on challenging the books of account by construing the activity of the assessee in the matter of purchase of land and transferring its development rights as a trading activity. The CIT(A) has not invoked provisions of section 145 in rejecting the accounts. The entire order is of barren of any finding whatsoever that section 145 was applicable and therefore CIT(A) was not permitted to reject the accounted version in the manner he has done and to hold that section 40A(3) was applicable. The Ld. AR further submitted that the cost of acquisition of land was not an

expenditure in the hands of the assessee and it was neither debited to profit and loss account nor it was claimed through computation of income and therefore was not subject to the provisions of section 40A(3). The cost of land having not been claimed as expenditure, there could be no disallowance u/s 40A(3). On the proposition that no disallowance can be made u/s 40A(3) where no deduction is claimed the Ld. AR relied upon the following decisions:-

i) CIT vs. Motilal Khatri (2008) 218 CTR 602 (Raj.)

ii) CIT Faridabad *vs.* Alpha Toyo Ltd (2008) 174 Taxmann 427 (Punj. & Har.)

iii) CIT vs. Banwari Lai Bansidhar [1998] 229 ITR 229 (All)

iv) Embee Clearing & Shipping Service Pvt. Ltd [2007] 12 SOT 227 (Mum.)

Thus, the Ld. AR submitted that the disallowance u/s 40A(3) should be deleted. The issue of disallowance u/s 40A(3) of cash payment made for purchase of land was first decided by the Tribunal, New Delhi in the case of another group company of M/s BPTP Group viz., M/s Westland Developers Pvt. Ltd vide order dated 22.08.2014 in ITA No.1752/Del/2013. The Tribunal held as under in para 10.10:-

> *"Accordingly on a consideration of the peculiar facts and circumstances of the case and the judgments relied upon considering the relevant provision of the Act namely Section 40A(3), we hold for the detailed reasons given hereinabove that Section 40A(3) of the Act has been wrongly invoked as admittedly no expenses relatable to the addition has been claimed and the assessee has successfully demonstrated that the payment were reimbursement made by CWPPL. Accordingly Ground No-4 is allowed'*

The disallowance made by the Assessing Officer, confirmed by the CIT(A) was deleted by accepting the plea of assessee since assessee has neither debited the amount of cost of land in Profit and Loss account nor claimed any deduction in respect of cost of land through computation. In view of above

facts that as amount was not claimed, the issue of disallowance u/s 40A (3) does not arise. The order in Westland Developers Pvt. Ltd (supra) is followed by various coordinate Benches of the Tribunal, Delhi Benches. It is important to mention that disallowance u/s 40A(3) was made by the Assessing Officer relying on order of the CIT(A)-XXX, New Delhi in case of M/s Business Park Promoters Pvt. Ltd in Appeal No.521/2009-10/309 dated 24.12.2012. Appeal filed against the said order in Appeal No.521/09-10/309 dated 24.12.2012 is allowed by the Tribunal, New Delhi Bench 'A' vide in ITA No.1732/De/2013 for the AY 2006-07 order dated 20.04.2015. As the very basis of making disallowance does not sustain, the disallowance need to be deleted. The Ld. AR further pointed out that decision of various coordinate Benches of the Tribunal in 34 cases, most of the cases like M/s Countrywide Promoters Pvt. Ltd, M/s Jasmine Buildtech Pvt. Ltd etc. are accepted by Income Tax Department as no appeal was filed before Hon'ble Delhi High Court on the issue of disallowance u/s 40A(3), despite the fact that tax effect was more than prescribed limits for filing appeal before Hon'ble High Court of Delhi. It is relevant to state as under:-

- Facts in the case of M/s Westland Developers Pvt. Ltd and M/s Business Park Promoters Pvt. Ltd (supra) and assessee are identical.
- Order of M/s Westland Developers Pvt. Ltd and M/s Business Park Promoters Pvt. Ltd (supra) has been accepted by the Department and no appeal has been filed by the Department.
- The order of M/s Westland Developers Pvt. Ltd and M/s Business Park Promoters Pvt. Ltd (supra) has been followed without any exception by Coordinate Benches of the ITAT in various cases as stated above Principles of judicial discipline and doctrine of precedent have been consistently followed by the Coordinate Benches of the Tribunal in following the order of M/s Westland Developers Pvt. Ltd.

Hence, the Ld. AR submitted that Ground No. 4 and 4.1 of the assessee against disallowance u/s 40A(3) be allowed.

12. The Ld. DR relied upon the order of the CIT(A) and the assessment order.

13. We have heard both the parties and perused all the relevant material available on record. As regards Ground No. 4 & 4.1 the development rights in land purchased were assigned in favour of M/s Countrywide Promoters Pvt. Ltd. pursuant to collaboration agreement entered into with them. From the perusal of the records it can be seen that the assessee has received reimbursement of all amounts paid related to transaction of purchase of land, stamp duty, Registration Charges as per Clause 3(b) of Collaboration Agreement. Bases on the agreement the assessee showed the income by way of fees at Rs. 35,000/- per acre in the year in which license on said land was received. While making the addition the Assessing Officer has totally ignored para 3.3 (b) of the Collaboration Agreement which clearly shows that Countrywide Promoters Pvt. Ltd. shall reimbursement of cost and expenses incurred by the assessee with respect to acquisition of land. The assessee has maintained proper books of accounts and all these transactions along with expenses were thoroughly shows in the books of accounts specially that of reimbursement as well. The Assessing Officer at no point of time rejected the books of accounts of the assessee. Though the finding of the Assessing Officer as well as CIT(A) is that the assessee was carrying business of development of real estate. From the perusal of record, it can be seen that these facts are not correct. The assessee is only carrying out acquisition of land and he expenses incurred on transactions of purchase of lands. In case of M/s West Land Developers Pvt. Ltd., the Tribunal has dealt this issue and allowed the similar issue relating to reimbursement made by the Country Wide Promoters Pvt. Ltd. The Ld. DR could not point out the distinguishing facts. Thus, the facts of the present case are also identical. Therefore, Ground No. 4 & 4.1 are allowed.

14. As regards to Grounds No.3, 3.1 and 3.2 of assessee's appeal relating to the disallowance of additional payment, the Ld. AR submitted that the Assessing Officer had made a disallowance of Rs.5,92,250/- u/s 37 on account

of additional payments for the purchase of land. The assessee had challenged before the CIT(A) that the deduction of the purchase of land having not been claimed by the appellant, no disallowance could be made. The CIT(A) did not accept this contention viz., that the assessee having not claimed the deduction, no disallowance could be made. The assessee also took plea that there is no violation of provisions of stamp duty Act as payment of Additional Payment is subsequent to registration of sale deed. Thus, provisions of Section 37(1) are not applicable instant case. CIT(A) gave his finding in para 6.3.7 of CIT(A) order and held that there is no violation of provisions of Stamp Duty Act and provisions of Section 37(1) of Income Tax Act, 1961 are not applicable in instant case. He however, gave certain directions to quantify the disallowance to be made. As per these directions while giving appeal effect the disallowance of Rs.5,72,250/- was deleted and balance of Rs.20,000/- was confirmed. The contention in Ground of Appeal No.3, however, is that the assessee having not claimed the expenditure, the same cannot be disallowed. Similar disallowance was made in the case of M/s Westland Developers Pvt. Ltd (a group company) for the AY 2006-07 and was partly confirmed by the CIT(A). The Tribunal vide order dated 22.08.2014 in ITA No.1752/De!/2013 for the AY 2006-07 deleted the addition and in para 13 held as under:-

> *"Ground No.3 on the facts available on record considering the judicial precedent referred to in detail while deciding Ground No.4 has to be decided in favour of the assessee."*

The order of the CIT(A) in M/s Westland Developers Pvt. Ltd is wholly identical to the order of CIT(A) in case of assessee. These orders are passed by the same Assessing Officer and same CIT(A). The Ld. AR submitted that the order of the Coordinate Bench in M/s Westland Developers Pvt. Ltd be followed. The order of the Tribunal in M/s Westland Developers Pvt. Ltd has been accepted by the Department and has been followed by various coordinate Benches of the Tribunal, Delhi in 28 cases. The Ld. AR pointed out that disallowance u/s

40A(3) was made by the learned Assessing Officer relying on order of CIT(A)-XXX, New Delhi in case of M/s Business Park Promoters Pvt. Ltd in Appeal No.521/2009-10/309 dated 24.12.2012. Appeal filed against the said order in Appeal No.521/09-10/309 dated 24.12.2012 is allowed by the Tribunal, New Delhi Bench 'A' vide in ITA No.1732/De/2013 for the AY 2006-07 order dated 20.04.2015. As the very basis of making disallowance does not sustain, the disallowance need to be deleted. It is important to mention here that in one of the group company in case of M/s Vasundra Promoters Pvt. Ltd, Department had filed appeal before Hon'ble Delhi High Court on the issue of addition made on account of disallowance of Additional Payment deleted by Tribunal on the said account. Thus, the Ld. AR further submitted that the facts in the case of M/s Westland Developers Pvt. Ltd and M/s Business Park Promoters Pvt. Ltd (supra) and assessee are identical. Order of M/s Westland Developers Pvt. Ltd and M/s Business Park Promoters Pvt. Ltd (supra) has been accepted by the Department and no appeal has been filed by the Department. Even Otherwise, Hon'ble Delhi High Court has not admitted appeal of Revenue on the issue of disallowance of Additional Payment by holding that violation of provisions of Stamp Duty Act does not ipso facto result in disallowance u/s 37(1) of Income Tax Act, 1961. Principles of judicial discipline and doctrine of precedent have been consistently followed by the Coordinate Benches of the Tribunal in following the order of M/s Westland Developers Pvt. Ltd. Hence, the Ld. AR prayed that Grounds No. No.3, 3.1 and 3.2 of the assessee be allowed. The Ld. AR further pointed out that both the disallowance made by the Assessing Officer on account of Additional Payment and on account of 40A(3) are in respect of payments/transaction are duly recorded in books of account. Further, assessment in this case was made u/s 153A of Income Tax Act, 1961. No incriminating seized documents were found during the course search qua assessee qua assessment year. The Ld. AR further relied upon the decisions which are as under:-

a) Gujarat High Court in Sayaji Iron and Engineering Co. v. CIT 253 ITR

749 (Guj.) wherein reference was made for similar view taken in CIT vs. L.G. Ramamurthi 110 ITR 453 (Mad).

b) Union of India vs. Paras Laminates Pvt. Ltd 1991 AIR 696 SC.

c) MP High Court in Agarwal Warehousing and Leasing Ltd v. CIT 257 ITR 235 (MP) followed the decision of the Supreme Court in UOI v. Kamlakshi Finance Corporation Ltd AIR 1992 SC 711, 712

d) Honda Siel Power Products Ltd. vs. CIT 165 Taxmann 307 (SC)

e) CIT vs. Goodlas Nerolac Paints Ltd [2016] 386 ITR 108 (Bom).

The Ld. AR reiterated that the facts in the case of M/s Westland Developers Pvt. Ltd and M/s Business Park Promoters Pvt. Ltd (supra) and facts of the assessee are identical. The Department cannot be allowed to revisit the matter on same facts on which the Tribunal have passed the order which have been followed by number of Coordinate Benches. Hence, the Ld. AR submitted that Ground Nos.3, 3.1 and 3.2 of the assessee be allowed and disallowance of Rs.20,000/- be deleted.

15. The Ld. DR submitted that the disallowance u/s 37 on account of additional payment for purchase of land was righty made as the assessee could not establish his case as the expenditure was incurred without any substantial evidence produced before the Assessing Officer to that effect by the assessee. The Ld. DR relied upon the assessment order and the order of the CITA).

16. We have heard both the parties and perused the material available on record. In case of M/s West Land Developers Pvt. Ltd. the issue was contested and was decided in favour of the assessee therein. Besides these facts, in one of the group company in case of M/s Vasundhara Promoters Pvt. Ltd. (ITA No.211/2018 vide order dated 14.05.2018) the Hon'ble Delhi High Court decided this issue and deleted the said additions while dismissing the appeal of

the Revenue. The Hon'ble Delhi High Court has not admitted the appeal of Department on the issue of disallowance of Additional payment by holding thus:-

"The second question of law urged is with respect to the payment of Rs.1,05,86,958/- made by the assessee to the farmer/owners of the agricultural land from whom the land was purchased. It is contended by the Revenue that the ITAT ought not to have gone by the fact that the amount was *routed from the books of account and included in the principle loss or that separate amount* was *used for that purpose. It was submitted that the amounts in fact constituted flagrant violation of law in as much as the provisions of the Stamp Act and other connected laws were sought to be evaded by the sale deed.*

This Court is of the opinion that the broad interpretation of the Explanation to Section 37(1) of the Act given by the Revenue is in the circumstances of this case not well founded. The other submission is that the such amount has to be taken as falling within the mischief of the said provision, in our opinion, is an incorrect premise. It is not every aliened violation of law, but such violation as results in a penal consequence. determined by that law, which is attracted by Section 37(1). The other interpretation would confer jurisdiction on matters beyond the Income Tax Act. The revenue authorities do not have such powers. Revenue Authority argued that this is to decide what constitutes infraction of other provisions of law. No question of law arises, therefore, on this issue"

Besides this, both the disallowance on account of additional payment u/s 37 & on account of Section 40A(3) are in respect of payments/transactions which were duly recorded in books of account. As the facts of the present assessee are identical to that of the group of companies in case of Westland Developers Pvt. Ltd and M/s Vasundhara Promoters Pvt. Ltd., the issue is allowed. The DR could not distinguish any facts for the present assessment year. In fact, the assessee having not claimed the expenditure, the same cannot be disallowed

under Section 37 of the Act on account of additional payment for the purchase of land. Hence Ground No. 3, 3.1 and 3.2 are allowed. Thus, appeal being ITA No. 2155/Del/2015 filed by the assessee for A.Y. 2006-07 is allowed.

17. In result, both the appeals of the assessee are allowed.

Order pronounced in the open court on this 12th Day of March, 2021

Sd/-	**Sd/-**
(N. K. BILLAIYA)	**(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 12/03/2021
*R. Naheed **

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI