

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER**

**ITA No.-1679/Del/2013  
(Assessment Year: 2007-08)**

ACIT Cent. Circle 23, New Delhi.	vs	Jasmine Buildtech (P) Ltd. M-11, Middle Circle, Cannaught Circus New Delhi. AABCJ6865E
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**ITA No.-1767/Del/2013  
(Assessment Year: 2007-08)**

Jasmine Buildtech (P) Ltd. M-11, Middle Circle, Cannaught Circus New Delhi. AABCJ6865E	vs	ACIT Cent. Circle 23, New Delhi.
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<b>Assessee by</b>	<b>Sh. V.S. Rastogi Sh. Ajay Bhagwani, CA</b>
<b>Revenue by</b>	<b>Sh. Amit Jain, Sr. DR</b>

<b>Date of Hearing</b>	<b>16.11.2017</b>
<b>Date of Pronouncement</b>	<b>21.11.2017</b>

**ORDER**

**PER SHRI K.N. CHARY, J.M.**

These two appeals are filed by the Revenue and the Assessee respectively challenging the order dated 18.12.2012 in appeal no. 495/09-10/284 passed by the Ld. Commissioner of Income Tax

(Appeals)-XXXIII, New Delhi (hereinafter for short called as the “Ld. CIT(A)”).

2. Facts relevant for the disposal of the appeal are that the assessee is a company incorporated under Companies Act, 1956 and is dealing in the Real Estate Development and Operations. For the AY 2007-08 they have filed their return of income on 22.10.2007 declaring the loss of Rs. 9,050/-. Assessing Officer during the scrutiny u/s 143(3) of the Income Tax Act, 1961 (for short called as the “Act”) made three additions namely a sum of Rs. 43,88,201/- on account of the interest paid in respect of the post dated cheques issued by the assessee to the vendors of the land, Rs. 97,45,249/- on account of the additional payments made over and above the sale consideration mentioned in the agreement of sale and a further sum of Rs. 4,56,502/- on account of the cash payments made for purchase of land from the farmers by invoking Section 40(A)(3) of the Act.

3. In appeal Ld. CIT (A) found that wherever the date of post dated cheque was extended, interest was paid at 15% p.a. in cash out of books of account as was evident from the seized material,

therefore, the interest on PDC to the extent of extension period was logical. Ld. CIT (A), therefore, directed the AO to re-compute the interest on PDC either on the sale consideration or additional payment to the extent of extended period of PDCs by the AO and in case the working out of the same is not possible, to re-compute the interest on PDCs after six months from the date of issue of PDCs i.e. date of sale, as six months is taken as reasonable period for giving PDC as per sale deed. In respect of the additional payment of Rs. 97,45,249/- Ld. CIT (A) directed the deletion of Rs.97,27,124/- on the ground that such payments were made to the owners of the land or their immediate family members who have got some legal claim over such land, on account of enhanced rate of land at the time of realization of PDC, and since the same is not covered by included for stamp duty. However, he confirmed the rest of the disallowance stating that any payment on account of plants, trees, tube wells or buildings cannot be allowed as deduction as the same will form part of sale consideration and stamp duty is leviable. Lastly, Ld. CIT (A) confirmed the additions made u/s 40(A)(3) of the Act stating that the ownership of the land was continued with the assessee and the contention of the

assessee that the cost of land was reimbursed by CWPPL was not acceptable, as such the cash payments in excess of Rs.20,000/- are hit by Section 40A(3) of the Act.

4. Challenging the findings of the Ld. CIT (A) in granting relief to the assessee in respect of interest on PDCs, and also the additional payment, the Revenue is in appeal before us; whereas challenging the findings of the Ld. CIT (A) in respect of sustaining the interest on PDCs for the period beyond six months, sustaining a part of the additional payments and the disallowance u/s 40(A)(3) the assessee is in appeal.

5. Now coming to the aspect of interest on PDCs, it is an admitted fact that the assessee is a part of BPTP Group and similar additions were made in respect of many group entities. Some matters were disposed of by the Tribunal also. Ld. AR submitted before us that in respect of the interest on PDCs, when a similar addition was made in the case of M/s IAG Promoters and Developers Pvt. Ltd., a coordinate bench of this Tribunal in ITA No. 1674/Del/2013 examined the issue at length and reached a conclusion that the directions given by the Ld. CIT (A) to

recalculate the interest on PDCs was on a sound logic and was upheld. The observations of the Tribunal, vide paragraph no. 5 are as follows:

*“After examining the loose papers seized at the time of search at the assessee's premises, it was noticed that interest is paid on the PDCs only during the period of extension of PDCs and, therefore, he directed the Assessing Officer to recompute the interest on PDCs at the time of extension of the PDCs. He has further observed that if it is not possible to work out the extension of PDCs in each case, then the Assessing Officer is directed to recompute interest on PDCs after six months from the date of issue of the PDCs. Therefore, the ground of appeal of the Revenue that the CIT(A) deleted the addition of ₹5,06,625/- made by the Assessing Officer on account of interest on PDCs is factually incorrect and contrary to the order of the CIT(A). The CIT(A) directed to recalculate the interest on PDCs and there was a sound logic for such direction. His direction is based on material found and seized at the time of search. In view of the above, we do not find any justification to interfere with the order of learned CIT(A) in this regard...”*

6. Now coming to the additional payment over and above the agreement price, a similar payment was involved in the case of M/s IAG Promoters and Developers Pvt. Ltd. and vide paragraph no. 11, the Tribunal considered this issue and found that there was neither any finding by the Ld. CIT (A) nor by the Assessing Officer on the aspect of whether such a payment was claimed as an expenditure while computing its business income, as such, the issue was set aside to the file of the AO directing him to verify whether the assessee has claimed such payment as an

expenditure, and in case no deduction was claimed the question of any disallowance would not arise, and its only if the deduction was claimed then the AO would work out the disallowance as directed by the Ld. CIT. Relevant observations are as follow:

*“11. We have carefully considered the submissions of both the sides. So far as the legal principle is concerned, we agree with the legal proposition made by the learned counsel that when no expenditure is claimed by the assessee, the question of disallowing the same by the Assessing Officer does not arise. It was explained by the learned counsel that the assessee was purchasing the land for and on behalf of another company of BPTP Group viz., M/s Countrywide Promoters Pvt.Ltd. and whatever payment is made by the assessee to land owners or their relatives for purchase of land was debited by the assessee to the account of CWPPL and the payment for purchase of land whether as per stamp duty or additional payment has not been claimed as an expenditure by the assessee. We find that on this factual aspect, there is neither any finding by the CIT(A) nor by the Assessing Officer. The ITAT in the case of M/s Westland Developers Pvt.Ltd. (supra) has also accepted the principle that when the expenditure is not claimed by the assessee, the same cannot be disallowed. In fact, there cannot be any dispute to the said legal proposition. However, the question still remains whether such payment i.e. additional payment made by the assessee to land owners or their relatives is claimed by the assessee as a deduction or not. We, therefore, set aside this matter to the file of the Assessing Officer and direct him to verify whether the assessee has claimed the payment of Rs.1,01,32,501/- as an expenditure while computing its business income. If no deduction is claimed, then the question of any disallowance would not arise. If the deduction is claimed, then the Assessing Officer would work out the disallowance as directed by the CIT(A).”*

7. Nothing contrary is brought to our notice on either of the aspects. Hence, while respectfully following the above, we upheld the findings of the Ld. CIT (A) and dismiss the grounds of appeals of both assessee and the Ld. CIT (A) on the aspect of interest on PDCs and set aside the issue relating to the payments made in addition to the agreement amount to the file of Ld. AO for verification as to whether the assessee has claimed the payment of as an expenditure while computing its business income. If no deduction is claimed, then the question of any disallowance would not arise. If the deduction is claimed, then the Assessing Officer would work out the disallowance as directed by the CIT(A).

8. Now coming to the disallowance u/s 40(A)(3), similar pleas taken by the assessee to the effect that when no payments were claimed as expense the question of deduction does not arise and in the case of a group company namely Westland Developers P. Ltd. vs. ACIT, I.T.A .No. 1752/Del/2013 (Assessment Year-2006-07) a coordinate bench of this Tribunal held as follows:

*“10. We have also taken ourselves through the judgement of the Jurisdictional High Court in the case of CIT vs Industrial Engineering Projects Pvt. Ltd. (cited supra) which has been relied upon before us for the proposition that reimbursement of expenses cannot be treated to be a Revenue receipt. How the judgement of*

*the Apex Court in Tuticorin Alkali Chemicals & Fertilizers is applicable to the facts of the present case has not been set out in the order of the authorities nor has the Ld. DR been able to address the applicability of the said judgement to the issue at hand. We have taken ourselves through the said judgement and seen that it proceeds on entirely different facts and circumstances and has no applicability to the facts of the present case. Consequently, it is seen that from the ratio of the judgements relied upon before the CIT(A) and also before us which have been discussed in the earlier part of this order no arguments have been advanced by the Revenue so as to contend how they are not applicable to the case at hand, no distinguishing fact, circumstance or position of law has been relied upon so as to come to a contrary finding than the one arrived at. Accordingly on a consideration of the peculiar facts and circumstances of the case and the judgements 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.”*

9. We have perused the orders in the group company's cases and it is held in both M/s IAG Promoters and Developers Pvt. Ltd. and Westland Developers P. Ltd. that when the payments are not claimed as expense no disallowance arises. We, therefore, hold that disallowance u/s 40(A)(3) is not sustainable and the same has to be deleted. We direct the AO to do so. Grounds of appeal on this aspect are answered accordingly.

10. In view of our findings in the preceding paragraph, the findings of the Ld. CIT (A) in respect of the interest on the PDCs is

upheld, the matter relating to the additional payments is restored to the file of the AO for re-computation as directed above and the disallowance u/s 40(A)(3) is directed to be deleted.

11. In the result, the appeals of the both Revenue & Assessee are allowed in part for statistical purposes.

Order pronounced in the open court on 21.11.2017

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Dated: 21.11.2017

\*Kavita Arora

Sd/-  
**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

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ASSISTANT REGISTRAR  
ITAT NEW DELHI