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

BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 1077/DEL/2015 (A.Y 2010-11)

DCIT Central Circle-32 New Delhi **(APPELLANT)**	Vs	Shalimar Town Planers Pvt. Ltd. M-11, Middle Circle, Connaught Circus New Delhi AABCS5851R **(RESPONDENT)**

Appellant by	**Sh. Kaushlendra Tiwari, Sr. DR**
Respondent by	**Sh. Ajay Bhagwani, CA**

Date of Hearing	**28.05.2018**
Date of Pronouncement	**30.05.2018**

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 21/11/2014 passed by CIT(A)-XXX, New Delhi for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

1. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in directing the A.O to compute the interest on post dated cheques from the date after the six months of issue of such post dated cheques i.e. from the date of execution of sale-deed.*

2. *On the facts and in the circumstances of the case and in law, the CIT(A)*

has erred in holding that additional payment made to the owners of the land is allowable as in expenses u/s 37 of the Act.

3. *The order of the CIT(A) is errenous and is not tenable on facts and in law."*

3. The return of income for the A.Y. 2009-10 was filed on 18/09/2010 declaring total loss at Rs.9,109/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called the Act) on 01/11/2010. Subsequently, the case was selected for scrutiny & notice u/s 143(2) of the Act, dated 19/08/2011 was duly served upon the assessee by speed post. In response to the said notice from time to time, the Chartered Accountant attended the office & submitted the necessary details & clarifications as placed on record. The Assessing Officer observed that in BPTP and some of its group companies first search & seizure operation was carried out on 15/11/2007. During the earlier assessment proceedings u/s 153A of the Act, it was very well proved that the assessee was used to pay part payments of the sale consideration in respect of the land purchased at the time of execution of the sale-deed and the payments of balance sale consideration were invariably made through post dated cheques (PDCs) and for the intervening period)i.e. period between the date of sale deed and the date of encashment of PDCs), interest was paid in cash to the vendors of the land by the vendee company on monthly basis @ 1.25% p.m. on the amount of PDCs and this cash payment of interest by the vendee company, was not accounted for by it, in its books of account. The addition on the ground has been made in the several group companies of the BPTP group during the course of earlier assessment proceedings u/s 143(3)/148/153A in consequence to search carried out on 15/11/2007. The Assessing Officer further observed that a sum of Rs.20,66,181/- has been paid by the assessee to the vendors as interest on PDCs issued to them. Since this interest was paid by the assessee company outside its books of accounts in cash and has not been accounted by it in its books of accounts, the same was added to the income of the

assessee being paid out of its undisclosed income. The Assessing Officer further made addition by holding that sum of Rs.52,51,250/- shown by the assessee as additional payment made to the farmers in its books of account is nothing but a made up affair and the payments made are not genuine and hence not admissible. Therefore, an amount of Rs.52,51,250/- was added to the income of the assessee on a/c of additional payments.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT (A). The CIT (A) partly allowed the appeal of the assessee. The Revenue is before us.

5. The Ld. DR relied upon the order of the Assessing Officer and submitted that the additions made by the Assessing Officer are just and as per the records and evidences produced before the Assessing Officer.

6. The Ld. AR submitted that Ground No. 1 is covered in favour of the assessee by the Co-ordinate Benches in various decisions more specifically in case of Sunglow Overseas Pvt. Ltd. Vs. ACIT being ITA No. 2156/del/2015 order dated 14/5/2018. As regards Ground No. 2, the Ld. AR submitted that the Hon'ble High Court confirmed the Tribunal decision in favour of the assessee by decision in case of Principal CIT Vs. Vasundara Promoters Pvt. Ltd. ITA No. 211/ 2018 order dated 14/5/2018 wherein the Hon'ble High Court held that the broad interpretation to the Explanation of 37(1) of the Act given by the Revenue is in the circumstances of this case not well founded and thus, confirm the ITAT decision in the said case.

7. We have heard both the parties and perused the material available on record. As regards ground No. 1 of the appeal, it is pertinent to note that the Tribunal in case of Sunglow Overseas Pvt. Ltd. (Supra) held as under:

> "*10. After considering the submissions of both the parties, it is noticed that this issue was decided in favour of the assessee in assessee's own case in ITA No.*

1367/Del/2013 for the assessment year 2007-08 wherein the findings given in the order dated 31.10.2014 in ITA Nos. 1674 & 1765/Del/2013 for the assessment year 2008-09 in the case of M/s IAG Promoters and Developers Pvt. Ltd. have been followed. The relevant findings have been given in the said order dated 14.09.2015 in para 11 & 12 read as under:-

"11. We have considered the submissions of both the parties and carefully gone through the material available on the record. It is noticed that an identical issue having similar facts has already been adjudicated by the ITAT Delhi Bnech 'C', New Delhi in the case of ACIT vs. M/s IAG Promoters and Developers Pvt. Ltd. (supra) wherein vide order dated 31.10.2014, the relevant findings are given in para 5 which read as under:

"5 We have heard the arguments of both the sides and perused relevant material placed before us. At the outset, the ground raised by the Revenue is misconceived because learned CIT(A) has not deleted the addition of Rs.5,06,625/- but has only directed to recalculate the interest. We have carefully gone through the order of the learned CIT(A) and also the submissions of both the parties and we do not find any infirmity in the order of the learned CIT(A). 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 recomputed 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 recomputed 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 Rs.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 and accordingly, we reject ground No. 1 of the Revenue's appeal."

12. Since the facts of the present case are identical to the facts involved in the aforesaid referred to case of M/s IAG Promoters and Developers Pvt. Ltd. So, respectfully following the aforesaid referred to order dated 31.10.2014, we do not see any valid ground to interfere with the findings given by the ld. CIT(A). Accordingly, we do not see any merit in the grounds of the assessee as well as the department, on this issue."

11. So, respectfully following the aforesaid order dated 14.09.2015, the impugned addition made by the AO and sustained by the ld. CIT(A) is also deleted."

The issue in present case also is identical and Ground No. 1 is in favour of the assessee by this Tribunal. It was very well proved that the assessee was used to pay part payments of the sale consideration in respect of the land purchased at the time of execution of the sale-deed and the payments of balance sale consideration were invariably made through post dated cheques (PDCs) and for the intervening period)i.e. period between the date of sale deed and the date of encashment of PDCs), interest was paid in cash to the vendors of the land by the vendee company on monthly basis @ 1.25% p.m. on the amount of PDCs and this cash payment of interest by the vendee company, was not accounted for by it, in its books of account. The addition on the ground has been made in the several group companies of the BPTP group during the course of earlier assessment proceedings u/s 143(3)/148/153A in consequence to search carried out on 15/11/2007. Thus, the Ground No. 1 of the Revenue's appeal is dismissed.

8. As regards to Ground No. 2 is also in favour of the assessee by the Hon'ble High Court decision in case of Vasundara Promoters Pvt. Ltd. (Supra). The Hon'ble High Court held as under:

"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 alleged 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."

The decision of the Hon'ble High Court is from the Tribunal's decision in case of ACIT vs. Vasundra Promoters (P) Ltd. (ITA No. 1527 & 1758/Del/2013 order dated 13.04.2017. The Tribunal held as under:

"11. We have heard the rival submissions and perused the relevant findings given in the impugned orders as well as the material referred to before us. The first and foremost thing which is quite apparent from the perusal of the profit and loss account is that assessee has not claimed any such expenses for sums aggregating to Rs. 1,05,86,958/-, nor it has been claimed in the computation of income. The assessee company purchases the land from the farmers and land owners and transfers the same to CWPPL and for such operations the assessee company is only entitled for remuneration of Rs.35,000/- per acre over and above the land cost. The entire payment for the purchase of sale is not routed through profit and loss account albeit directly debited/credited to the CWPPL account. This is evident from the copy of the ledger account of CWPPL and copy of profit and loss account filed before us. The ld. CIT(A) has rejected this contention of the assessee mainly on the ground that registration is done in the name of the assessee and the ownership of the land also lies with the assessee. However, in the order he himself has noted from the 'agreement' that, in lieu of transferring of development right to CWPPL, the assessee company only gets commission or charges of Rs. 35,000/- per acre and the entire cost of land is reimbursed by the CWPPL. Once no such expenditure has been claimed at all or debited to the profit & loss account, ostensibly there is no question of any disallowance to be made in the hands of the assessee. In the Westland Developers Pvt. Ltd. (supra), the Tribunal has dealt exactly with the similar issue in the following manner:-

"We have heard the rival submissions and perused the material available on

record. The case law relied upon by the parties has been taken into consideration. On a consideration of the same we are of the view that since in the facts of the present case the material issue is that the said expenditure was never claimed as assessee's business expenditure the occasion to make a disallowance of the same does not arise. On this fact there is no dispute as admittedly the expenditure was never claimed as an expense by the assessee and consequently has not been routed through its P&L A/c, In the circumstances, the occasion to make an addition of the same by way of a disallowance in these peculiar facts and circumstances of the case does not arise. The reasoning and finding given while considering the arguments qua Ground No. 4 would fully apply here also. The difference that here the entire amount is added u/s 37 as opposed to part of the expenditure disallowed u/s 40A(3) is not so material as the finding is arrived at taking cognizance of the material fact that hereto also no such claim of expenditure has been made. The fact that the additional payments were warranted in order to avoid potential disputes amongst the claimants of the land holding which have been passed through to die land holders from generation to generation wherein there may be informal arrangements of ownership and or the payments were for commercial expediency of facilitate peaceful possession and registration of the land holding; where by the time Registry was made the landholders felt a higher payment was necessitated due to increase in value are issues which are not required to be addressed in the present proceedings. 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."

12. The aforesaid decision has been followed in other cases of the group companies also. Thus, on the aforesaid reasoning and binding judicial precedents, we also hold that, there is no question of any disallowance of expenditure in the hands of the assessee. Accordingly, the ground no. 2 of the revenue is dismissed."

In the present case, the CIT(A) has given categorical finding that the payment for acquiring land cannot be said disbursement of expense or not claimed as expense. In case of owner i.e. assessee effectively the owner of the land is purchasing the same and selling all the rights in said land at a cost of land

plus Rs. 35,000 per acre. Therefore, the cost of land plus Rs. 35,000 per acre is the sale cost which effectively claimed but due to accounting entries, such transaction gets squared up to the extent of cost of land, as such owner including the assessee is directly crediting Rs. 35,000 per acre in its P&L account. Thus, the case is squarely covered by the decision of the Vasundra Promoters (P) Ltd. (Supra). Ground No. 2 of the Revenue's appeal is dismissed.

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

Order pronounced in the Open Court on 30th May, 2018.

Sd/- Sd/-

(N. K. SAINI) **(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Dated: 30/05/2018
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	28/05/2018	PS
2.	Draft placed before author	28/05/2018	PS
3.	Draft proposed & placed before the second member	.2018	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	30.05.2018	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	30.05.2018	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		