

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.1354/DEL/2015  
Assessment Year: 2007-08

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| Green Valley Tower Pvt Ltd.<br>M-11, Middle Circle,<br>Connaught Circus<br>New Delhi - 11001 | Vs | DCIT<br>Central Circle -32<br>New Delhi -110055 |
| <b>(APPELLANT)</b>   |    | <b>(RESPONDENT)</b>                             |

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|---------------|--------------------------|
| Appellant by  | Sh. Ajay Bhagwani, CA    |
| Respondent by | Smt. Meeta Singh, CIT DR |

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| Date of hearing:       | 18/06/2018 |
| Date of Pronouncement: | 19/06/2018 |

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal filed by the assessee is preferred against the order of the CIT (A)-XXX, New Delhi dated 24.11.2014 pertaining A. Y. 2007-08.

2. The grievance of the assessee read as under :-

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 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, thereby sustaining the addition to the extent of Rs.9,54,249/-.*

3. *That on the facts and circumstance of the case and in law the CIT(A) erred in sustaining the disallowance of Rs.12,31,160/- u/s 40A(3) of the IT Act despite the fact that no deduction in respect of said sum was claimed in the computation of income from business.*

3. The briefly stated the facts of the case are that a search and seizure operation was carried at the business premises as well as the residential premises of M/s. BPTP Group of cases on 07.12.2010. Copy of a sale deed dated 17.03.2005 was found which was between Sh. Rajan and the assessee for a piece of land at Kheri Kalam Farida for a consideration of Rs. 43,00,000/-.

4. The Assessing Officer was of the firm believe that since the impound provisions of section 153C of the Act squarely applied and accordingly issued and served notice u/s. 153A of the Act. Following additions were made a addition on account of interest on PDC addition on account of disallowance u/s. 40 A(3) of the Act.

5. As mentioned elsewhere the date of search is 07.12.2010 and assessment in the case of the assessee has complied u/s. 143 (3) of the Act vide order dated 30.12.2009. This means that on the date of the search assessment year 2007-08 stood concluded and therefore, if the Assessing Officer wanted to assess u/s. 153 C r/w 153 A of the Act. He could only make the assessment only on the basis of some incriminating material found at the time of the search. The Assessing Officer cannot disturb a concluded assessment without there being any reference to any

incriminating material against the assessee. For this proposition we draw support from the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla 380 ITR 573.

6. Since no incriminating material has been referred in the assessment order framed u/s. 153 C/ 153 A of the Act. The entire assessment is avoid-ab-initio. Moreover a perusal of the assessment so framed show that the Assessing Officer has made the same additions which were made in the assessment framed u/s 143 (3) of the Act vide order dated 30.12.2009.

7. Considering the facts of the case in totality in the light of the settled proposition of law the assessment order is quashed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 19.06.2018.

Sd/-

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Sd/-

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

\*NEHA\*

Date:- 19.06.2018

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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| Date of dictation  | 18.06.2018 |
| Date on which the typed draft is placed before the dictating Member                  | 19.06.2018 |
| Date on which the typed draft is placed before the Other member                      | 19.06.2018 |
| Date on which the approved draft comes to the Sr.PS/PS                               | 19.06.2018 |
| Date on which the fair order is placed before the Dictating Member for Pronouncement | 19.06.2018 |
| Date on which the fair order comes back to the Sr. PS/ PS                            | 19.06.2018 |
| Date on which the final order is uploaded on the website of ITAT                     | 19.06.2018 |
| Date on which the file goes to the Bench Clerk                                       | 19.06.2018 |
| Date on which file goes to the Head Clerk.   |            |
| The date on which file goes to the Assistant Registrar for signature on the order    |            |
| Date of dispatch of the Order  |            |

