

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

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

ITA No. 1340/DEL/2015
[Assessment Year: 2007-08]

Green Valley Housing and Land
Development Pvt Ltd
M-11, Middle Circle,
Connaught Circus,
New Delhi

Vs.

The D.C.I.T
Central Circle - 32
New Delhi

PAN : AAACG 4113 H

[Appellant]

[Respondent]

Date of Hearing : 19.06.2018
Date of Pronouncement : 25.06.2018

Assessee by : Shri Ajay Bhawani, CA

Revenue by : Shri S.L Anuragi, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-XXX, New Delhi dated 24.11.2014 pertaining to assessment year 2007-08.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in sustaining the disallowance of Rs. 1,10,000/- u/s 40A(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short].

3. Briefly stated, the facts of the case are that assessment was framed u/s 143(3) of the Act vide order dated 30.12.2009 at an income of Rs. 2.64 crores after making addition of Rs. 93,47,930/- on account of interest on PDC, addition of Rs. 1,10,000 on account of disallowance u/s 40A(3) of the Act and Rs. 1.68 crores on account of disallowance of additional payment to the returned income.

4. We find that the additions/disallowances travelled upto the Tribunal and the relevant part of the decision of the coordinate bench in ITA No.1747/DEL/2013 reads as under:

" The next issue vide Ground No. 5, relates to the confirmation of disallowance made by the AO u/s 40A (3) of the Act.

8. As regards to this issue, the Id. Counsel for the assessee at the very outset stated that this issue is covered vide order dated 02.01.2015 in ITA No. 1747/Del/2013 in the case of M/s Glitz Builders and Promoters Pvt. Ltd Vs ACIT (Supra). In her rival submissions, the Ld. DR although supported the orders of the authorities below but could not controvert the aforesaid contention of the Ld. Counsel for the assessee.

9. After considering the submissions of both the parties and the material available on the record, it is noticed that an identical issue having similar facts

was involved in the case of M/s Glitz Builders and Promoters Pvt. Ltd Vs. ACIT (Supra) wherein vide order dated 2/1/2015 in Para 6 to 10, it has been observed as under:-

" 6. The assessee, aggrieved with the disallowance sustained u/s 40A(3) and part disallowance in respect of additional payment, is in appeal while the Revenue is in appeal in respect of relief allowed on account of additional payment.

7. It is submitted by the Ld. Counsel that any payment which has not been claimed by the assessee as an expenditure cannot be disallowed. He stated that the assessee purchased the land for an on behalf of CWPPL and any payment for the purchase of land or for additional payment has been debited to the account of CWPPL. Therefore, when no deduction is claimed by the assessee for purchase of land or for additional payment, the disallowance u/s 40A(3) or for additional payment cannot be made in the hands of the assessee.

1533, 1673 & 2690/Del/2013 Green Valley Housing & Land Development

8. Ld. DR on the other hand, relied upon the order of the Assessing Officer. He stated that the assessee has purchased the land and handed over the same to CWPPL. Thus, it is a case of purchase and sale of land by the assessee to CWPPL. Merely because the assessee has not passed the entry of purchase and sale of the land in its books of account and only accounted for the remuneration from the sale of land, application of [Section 40A\(3\)](#) cannot be avoided. He, therefore, submitted that the order of Assessing Officer should be sustained.

9. We have carefully considered the submissions of both the sides and perused relevant material placed before us. The assessee has produced the collaboration agreement before the Assessing Officer and has submitted as under:-

"Based on the aforesaid Agreement the assessee purchased land for which the (M/s Countrywide Promoters Pvt. Ltd.) has reimbursed all costs and expenses with respect to the acquisition of the said land and also in conformity with the Collaboration Agreement the assessee has received fees calculated @ Rs.35,000/- per acre, which is duly credited to the Profit and Loss Account as the income."

10. The above facts stated by the Ld. Counsel during assessment proceedings have not been found to be incorrect or non- genuine. As per the collaboration agreement, the assessee was to purchase the land for and on behalf of CWPPL and whatever was the purchase price including the additional payment was debited to CWPPL and the assessee only received fixed remuneration i.e. Rs.35,000/- per acre. Thus, we agree with the contention of the Ld. Counsel that the assessee has not claimed any deduction in respect of cost of the purchase of the land, whether original or additional payment. When the cost of the land, as well as additional payment is not claimed by the assessee as

deduction, the 1533, 1673 & 2690/Del/2013 Green Valley Housing & Land Development question of any disallowance u/s 40A(3) or otherwise in the case of the assessee does not arise. We, therefore, delete the entire disallowance made by the Assessing Officer u/s 40A (3) as well as additional payment."

10. Since the facts of the present case are identical to the facts involved in the aforesaid referred case so respectfully following the earlier order dated 02.01.2015 of this Bench of the Tribunal in ITA No. 1747/Del/2013 (supra), the disallowance sustained by the Id. CIT(A) is deleted."

5. A perusal of the present assessment order shows that the Assessing Officer has once again made addition on account of disallowance u/s 40A(3) of the Act amounting to Rs. 1.10 lakhs.

6. This assessment is framed u/s 153C/153A of the Act. The law is settled that the concluded assessment can only be disturbed when there is some incriminating material found at the time of search and the same is referred to while framing assessment u/s 153C/153A of the Act. For this proposition, we draw support from the judgment of the Hon'ble Jurisdictional High Court of Delhi in the case of Kabul Chawla 380 ITR 573 [DEL] wherein the Hon'ble High Court summarized a legal position in para 37 of the order wherein it was explicitly held that an assessment u/s 153A of the Act has to be made only on the basis of seized material.

7. Since similar additions have been made by the Assessing Officer which were made while framing assessment u/s 143(3) of the Act and deleted by the Tribunal, the present assessment becomes void for want of incriminating material. We, accordingly, set aside the findings of the Id. CIT(A) and direct the Assessing Officer to delete the addition of Rs. 1.10 lakhs.

8. In the result, the appeal of the assessee in ITA No. 1340/DEL/2015 is allowed.

The order is pronounced in the open court on 25.06.2018.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 25th June, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	19.06.2018
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	25.06.2018
Date on which the approved draft comes to the Sr.PS/PS	25.06.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	25.06.2018
Date on which the fair order comes back to the Sr.PS/PS	25.06.2018
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	