

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

**BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.1350/Del/2015
Assessment Year: 2011-12**

Designer Realtors P. Ltd. M-11, Middle Circle, Connaught Circus, New Delhi. PAN: AADCD1057G (Appellant)	Vs	DCIT, Central Circle -32, New Delhi. (Respondent)
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**Assessee by: Shri Piyush Kaushik, Advocate
Revenue by: Ms Nidhi Srivastava, CIT- DR**

**Date of Hearing 01.05.2019
Date of Pronouncement 13.05.2019**

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 21.11.2014 in Appeal No.206/13-14 passed by the Id. Commissioner of Income-tax (Appeals)-XXX, New Delhi (for short 'Ld. CIT(A)'), assessee preferred this appeal.

2. Brief facts of the case are that pursuant to the search and seizure operation carried out at various premises of M/s BPTP Ltd. and its group concerns and associated persons on 7.2.2010 and concluded on 5.2.2011 and since the assessee is associated with BPTP group, the case of the assessee was taken up for scrutiny by issuance of notice u/s 142(1)

of the Income-tax Act, 1961 (“the Act”). Assessee filed return of income on 22.9.2011 declaring the total income as nil. However, Id. AO by order dated 28.3.2013 made addition of Rs.2,68,945/- on account of the Post-Dated Cheques and a sum of Rs.2 lacs on account of disallowance u/s 40A(3) of the Act and assessed the income at Rs.4,68,945/-. Learned CIT(A) allowed the appeal in part, but confirmed the addition of Rs.2 lacs, which is relevant for the purpose of this appeal, by following his own order in the case of M/s Business Park Promoters P. Ltd. in Appeal No.521/09-10/309 by order dated 24.12.2012 for the Asstt. Year 2006-07. Hence, the assessee is in this appeal. Though the assessee preferred the appeal on many grounds, at the time of arguments, all the grounds were given up except Ground No.3, which relates to the addition of Rs. 2 lacs made by the Id. AO u/s 40A(3) of the Act.

3. It is submitted by the learned AR that the order in the case of M/s Business Park Promoters P. Ltd., referred to by the authorities below for sustaining the addition of Rs.2 lacs u/s 40A(3) was considered by a coordinate Bench of this Tribunal in ITA No.1404/Del/2013 and by order dated 20.4.2015, the Tribunal deleted the said addition.

4. Learned DR relied upon the orders of the authorities below.

5. We have gone through the record. It could be seen from the assessment record that the learned AO also referred to the order dated 20.4.2012 in Appeal No.521/09-10/309 for the Asstt. Year 2006-07 in the case of M/s Business Park Promoters P. Ltd. passed by the first appellate authority. Learned CIT(A) also while placing reliance on the said decision sustained the addition. It is not in dispute that in so far as

that particular addition u/s 40A(3) is concerned, under similar set of facts, a coordinate bench of this Tribunal in ITA No.1404/Del/2013 by order dated 20.4.2015 deleted the same.

6. It is, therefore, clear that the very basis on which the ld. AO made the addition and the learned CIT(A) sustained the addition is no longer in existence. We, therefore, in this factual situation, while respectfully following the decision of a coordinate bench of this Tribunal, delete the addition.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 13th May, 2019.

Sd/-
(G.D. AGARWAL)
VICE PRESIDENT
Dated: 13th May, 2019
VJ

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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