IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.1742/Del./2013
Assessment Year 2007-2008

M/s. Gitanjali Promoters Pvt. Ltd., M-11, Middle Circle, Connaught Circus, New Delhi – 110 001. PAN AABCG0237D	vs.,	The ACIT, Central Circle-23, E-2, ARA Centre, Jhandewalan Extension, New Delhi.
(Applicant)		(Respondent)

For Assessee :	-None-
For Revenue :	Ms. Rinku Singh, Sr. D.R.

Date of Hearing :	04.09.2019
Date of Pronouncement :	16.09.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-33, New Delhi, Dated 24.12.2012, for the A.Y. 2007-2008.

2. Briefly the facts of the case are that assessee company filed return of income declaring income of Rs.31,000/-. The A.O. noted brief history of the case that

the assessee company belongs to BPTP Group. This group is a leading real estate developer operating all over India but mainly it is working in the NCR area. A search operation was carried out on BPTP Ltd. and some of its group companies on 15.11.2007 by Directorate of Investigations (Delhi). The assessee company also belongs to this group but no search was carried out on it though a number of documents indicating discrepancies and transactions of suppression of income in the case of the assessee were also noticed. The A.O. noted at assessment proceedings that the assessee company is one of the Group Company which has purchased the land in District Faridabad. On perusal of the details of payment of purchase consideration it has been noticed that in four cases as mentioned in para 2.1 of the assessment order that assessee has made only part payment of the purchase consideration at the time of execution of the sale deed and the balance consideration was paid through post dated cheques (PDCs), which were encashed after several months from the date of sale deed. The A.O. further noted that the *modus operandi of* the BPTP

Group companies and assessee that they are in practice of issuing post dated cheques. The land is purchased through sale deed, but, only part consideration have been paid and balance consideration has been paid 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 PDC, 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 PDC. During post search enquiries, it was noticed that the said payment of interest by the vendee company in cash have not been recorded by them in their books of account. On being confronted with this fact, the assessee came forward with the explanation that the records are just a 'memorandum of discussions' and not actual payment. The explanation of assessee were found as an afterthought and without any basis. The A.O. referred to several documents in the assessment order to show that the Group companies issued PDC have been collected and interest payment @ 15% has been worked-out on the period for which PDCs remained unencashed (outstanding). The

details and seized documents are reproduced in the assessment order. The A.O. also noted that there are other seized documents which prove that interest have been paid to the vendors. The explanation of assessee was called for that as to why the addition be not made on account of interest paid in cash on PDCs which are not recorded in the books of account. The assessee was directed to produce these vendors to whom payments have been made through PDCs. The assessee however, did not produce any such vendor to whom payments were made through PDCs. The assessee filed reply in which assessee denied to have paid any interest to the vendors. The A.O. did not accept explanation of assessee and considering the material on record computed the interest @ 15% p.a. which is paid outside the books of account towards the sale transactions carried out by the assessee company and made the addition of Rs.13,54,914/-.

3. The assessee challenged the addition before the Ld. CIT(A) that in this case assessment should not be framed under section 143(3) as assessment should have been

framed under section 153C only. The Ld. CIT(A) however noted that assessment order nowhere mentions that any part of the seized material belong to company. The assessee company is one of the group company of BPTP group and the material on record shows that there is an unaccounted expenditure on account of interest paid on PDCs. The Ld. CIT(A), therefore, held that assessment have been made correctly under section 143(3). The Ld. CIT(A) also noted that addition is made on the basis of the material on record. The Ld. CIT(A) also noted that assessment could be framed on the basis of the material obtained from the search even if search is made in contravention of the provisions of the Act and relied upon Judgment of Hon'ble Supreme Court in the case of Pooran Lal vs. CIT [1974] 93 ITR 505 (SC) . This ground of appeal of assessee was accordingly dismissed.

4. The Ld. CIT(A) also considered the issue of interest payment on PDCs in the light of incriminating material on record and held that interest payment of extension of period of PDCs are established on the basis of the seized documents. The Ld. CIT(A), however, noted that it

is not possible to work-out extension of PDCs in each case then A.O. was directed to re-compute the interest of PDCs after six months from the date of issue of PDCs i.e., date of the sale as six months is taken as reasonable period for giving PDCs as per sale deed. Appeal of assessee was partly allowed.

5. On the last date of hearing on 02.07.2019, appeal was adjourned on the request of Counsel for Assessee to 04.09.2019. However, on the date of hearing on 04.09.2019, none appeared on behalf of the assessee. The appeal is, therefore, heard in the absence of assessee.

6. We have heard the Ld. D.R. and perused the material on record. The Ld. D.R. relied upon the impugned orders and submitted that in the following cases, the ITAT, Delhi Bench confirmed the Order of the Ld. CIT(A) in which A.O. was similarly directed to re-compute the interest on PDCs after six months from the date of issue of PDCs.

(i) Business Park Builders Pvt. Ltd., New Delhi vs. ACIT, Central Circle-23, New Delhi & Others in ITA.Nos.1768 & 1733/Del./2013 etc., Dated 29.04.2015.

(ii) ACIT, Central Circle-23, New Delhi vs. M/s. IAG Promoter & Developers (P) Ltd., New Delhi in ITA.Nos.1674 & 1765/Del./2013, Dated 31.10.2014.

7. We have considered the rival submissions and do not find any merit in the appeal of assessee. The assessee in the present appeal has challenged the assessment order under section 143(3) on the premise that assessment ought to have been framed under section 153C of the I.T. Act. It is also stated in the grounds of appeal that there is no material available on record to make the above addition. It is also stated that the Ld. CIT(A) has erred in not quantifying the addition and instead giving ambiguous directions to compute the interest after six months from the date of the sale. The Ld. CIT(A) has specifically noted in his findings that A.O. has nowhere mentioned in the

assessment order any part of the seized material belongs to the assessee. Therefore, conditions of Section 153C are not satisfied in this case. The A.O, therefore, rightly framed regular assessment under section 143(3) after considering the incriminating material available on record. The A.O. in para-2 with regard to addition of the interest on PDCs has mentioned that on perusal of the bills of payments of purchase consideration it was noticed that only part payments have been made while executing the sale deed and balance consideration was paid through PDCs. Therefore, the addition is made by the A.O. on the basis of the documentary evidences produced by the assessee with regard to the payments mentioned in the sale deed. The A.O, therefore, correctly made assessment under section 143(3) of the I.T. Act. Further, the A.O. has examined the evidences available on record and rightly came to the conclusion that assessee paid interest in cash on PDCS. The Ld. CIT(A) on examination of the material on record in the light of seized material and others rightly directed the A.O. to compute interest from PDCs after six months from the

date of issue of PDCs. The Ld. D.R. relied upon the above decisions of the ITAT, Delhi Bench in which similar directions of the Ld. CIT(A) have been confirmed by the Tribunal. In this view of the matter and in the absence of any representation from the side of the assessee, we do not find any merit in the appeal of assessee and the same is accordingly dismissed.

8. In the result, appeal of Assessee dismissed.

Order pronounced in the open Court.

Sd/-	Sd/-
(PRASHANT MAHARISHI)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 16th September, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
DELHI.