

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1762/Del/2013
(Assessment Year: 2006-07)

Green Valley Housing and Land Development Pvt. Ltd, M-11, Middle Circle, Connaught Circus, New Delhi PAN: AAACG4113H	Vs.	ACIT, Central Circle-23, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Ajay Bhagwani, CA
Revenue by:	Shri Avikal Nanu, Sr. DR
Date of Hearing	21/10/2019
Date of pronouncement	16/01/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-XXXIII, New Delhi dated 17.12.2012 for the Assessment Year 2006-07.
2. The assessee has raised the following grounds of appeal:-
 - “1. That on the facts and circumstances of the case and in law the CIT(A) erred in rejecting appellant's contention that assessment order made by Assessing Officer was bad in law and void ab-initio on the ground that it ought to have been made u/s 153C of the Income Tax Act, and not, as was done u/s 143(3)/ 147 of the Income Tax Act.
 2. That without prejudice, on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the assumption of jurisdiction u/s 147 by the Assessing Officer and in making the assessment in pursuance thereof, without dealing with appellant's objections on merits.
 - 2.1 That the CIT(A) having given a finding that no seized material obtained from the search of BPTP Group of cases (no search having been made on the appellant) belonged to the appellant, clearly erred in yet upholding the action u/s 147 taken in the hands of the appellant based on such seized material.
 3. That on the facts and circumstances of the case and in law the CIT(A) erred in holding to quote, 'that seized documents definitely proves that interest is paid on PDC' despite-

- i. *that the seized record on the basis of which above finding was given, even according to his own finding by the CIT(A), did not belong to the appellant and,*
 - ii. *that no enquiries were made from any of the alleged recipients of the interest and none was confronted with relevant document(s).*
- 3.1 *That the finding of the CIT(A) is based on mere surmises and conjectures without proof and corroboration by independent evidence.*
- 3.2 *That without prejudice the CIT(A) erred in upholding the addition of interest for the period for which PDC's were extended.*
- 3.3 *That without prejudice the CIT(A) erred in not quantifying the addition and instead giving ambiguous directions to compute the interest after six months from the date of sale.*
- 4. *That on the facts and circumstances of the case and in law the CIT(A) erred in not accepting the appellant's contention that Additional Payments having not been claimed as deduction by appellant, no disallowance could have been made in the hands of the appellant.*
 - 4.1 *That without prejudice the CIT(A) erred in upholding the disallowance of Additional Payments made to the recipients who were not the owners of land and to the payment made in cash.*
 - 4.2 *That without prejudice the CIT(A) erred in not himself quantifying the addition to be made.*
 - 4.3 *That without prejudice the CIT(A) did not deal with the following specific ground No.4.1:-*
 - "4.1. Without prejudice, the learned Assessing Officer has erred in making an addition of Rs.49,46,439/- on account of additional payments as recorded in books of account of appellant company as against amount of Rs.24,14,269/- paid on account of additional payment and recorded in books of accounts."*
- 5. *That on the facts and circumstances of the case and in law the CIT(A) erred in upholding the disallowance u/s 40A(3) in respect of which no deduction was claimed by the appellant.*
 - 5.1 *That even on merits the disallowance was not justified.*
- 6. *That the orders passed by the Assessing Officer and Commissioner of Income Tax (Appeals)-XXXIII, New Delhi are bad in law and void ab-initio."*
- 3. The assessee did not press ground Nos. 1, 2, 3 6 and 7 hence, they are dismissed.
- 4. Ground No. 4 relates to disallowance on account of additional payment whereas the ld AO has made a disallowance of Rs. 4946439/- u/s 37 of the Act on account of additional payments on purchase of land. The ld

AO disallowed the above payment which was challenged before the ld CIT(A) stating that the deduction for purchase of land has not been claimed by the assessee as deduction. It was further stated that provision of section 37(1) does not apply. The ld CIT(A) gave certain direction to the ld AO. As per the above direction the ld AO deleted the addition of Rs. 4346439/- and retained only of Rs. 6 lacs. Ld AR further stated that similar disallowance made in the case of group cases. Thus, now issue before us is of disallowance of only Rs. 6 lakhs of additional payment. Identical issue was involved and same was allowed in favour of the assessee. It was further stated that identical additions were made in the hands of the assessee for Assessment Year 2007-08 and 2008-09 are also deleted by the coordinate bench. It was further stated that the issue is also clearly covered by the decision of the Hon'ble Hon'ble Delhi High Court in ITA NO. 211/2018 dated 14.05.2018 where the appeal of the revenue has not been admitted. Thus, the ld AR submitted that ground No. 4 of the appeal is covered in favour of the assessee by the decision of the Hon'ble Delhi High Court.

5. The ld DR could not controvert the above issue.
6. We have carefully considered the rival contentions and find that identical issue has been considered in case of several group concern of the assessee as well as the assessee. The Hon'ble Delhi High Court has also decided the issue in favour of the assessee by not admitting the appeal of the revenue in case of Vasundhara Promoters Pvt. Ltd on identical facts. The ld DR also could not show any reason that how this issue is not covered. Therefore, respectfully following the decision of the Hon'ble Delhi High Court, as well as orders of the coordinate bench in number of cases, involving identical issues in the group concern of the assessee, ground No. 4 of the appeal is allowed.
7. Ground No. 5 of the appeal relates to the disallowance u/s 40A(3) of the Act.
8. The assessee submits that the above issue is also covered in favour of the assessee by the several decisions of the coordinate benches as well as in case of the assessee for Assessment Year 2007-08 and 2008-09. This

fact is not controverted by the ld DR. In view of this ground No. 5 of the appeal is allowed.

9. In the result appeal of the assessee is partly allowed.
Order pronounced in the open court on 16/01/2020.

-Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 16/01/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi