

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
A N D
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 2158/Del/2015
(Assessment Year: 2007-08)

Glitz Builders and Promoters Pvt. Ltd., M-11, Middle Circle, Connaught Circus, New Delhi – 110 001. PAN: AABCG9331N	Vs.	ACIT, Central Circle : 32, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Ajay Bhagwani, C.A.
Revenue by:	Ms. Meenakshi Goswami, CIT-DR
Date of Hearing	09/12/2020
Date of pronouncement	09/12/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of CIT (Appeals)-XXX, New Delhi, dated 29.12.2014 wherein the appeal filed by the assessee against the order passed by the Assistant Commissioner of Income Tax, Central Circle-32, New Delhi, under Section 153A of the Income Tax Act, 1961 (the Act) on 28th March, 2013 for Assessment Year 2007-08 was challenged and it was dismissed.
2. The assessee has raised the following grounds of appeal :-

“ 1. That on the facts and circumstances of the case, the assessment made u/s 153A of the Act by the Assessing Officer and confirmed by the CIT(A) is bad on facts and in law on the ground that as per Panchnama, no material belongs to assessee whatsoever was seized in the course of search u/s 132 of the Act on 07.12.2008 on the assessee and therefore the utilization of the material seized in the course of search on 15.11 2007 on BPTP Ltd (and not on assessee) was not permissible in the present assessment.

2. That without prejudice on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition of Rs.1,68.63,358/- made on

account of alleged unaccounted payment of interest on PDCs in cash outside books of accounts.

3. That on the facts and circumstances of the case and in law the CIT(A) erred in upholding the disallowance of Rs.1,20,312/- u/s 40A(3) of Income Tax Act.

4. 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.

5. The appellant craves permission to add, amend, alter or vary all or any grounds of appeal on or before the date of hearing of the appeal. “

3. The Brief facts of the case show that a search and seizure operation was carried out on M/s BPTP Ltd., its group concern and associated persons on 7.12.2010 and concluded on 5.02.2011. Assessee is associated with that group and, therefore, notice under Section 153A of the Income Tax Act, 1961 (the Act) was issued on 11.01.2012. On 1.02.2012 assessee furnished return of income declaring total income at 'NIL'.
4. The assessment under Section 153A of the Act was passed on 28th March, 2013 wherein the total taxable income of the assessee was assessed at Rs.1,69,83,670/-. This order was challenged before the ld. CIT (Appeals)-XXX, New Delhi. He passed an order on 29.12.2014 dismissing the appeal of the assessee. Therefore, assessee is in appeal before us.
5. We have heard the rival contentions and perused the orders of the lower authorities.
6. On the merits, first addition made is of Rs.1,68,63,358/- on account of interest on post-dated cheques (PDC). The learned Assessing Officer in para 2 has noted that assessment in this case has been completed earlier on 29.12.2009 under Section 143(3) of the Act at an income of Rs.4,23,52,990/- after making an addition of Rs.4,02,21,741/- on account of interest on PDC and further addition of Rs.21,31,249/- on account of additional payment. In this assessment pursuant to the search under Section 153A of the Act assessee was asked to explain that why the additions made in the earlier assessment order [in proceedings u/s 143 (3)] should not be made again. The submission of the assessee is that addition made on account of interest paid on PDC has been deleted by the ld. CIT (Appeals) to the extent of Rs.2,33,58,383/- out of the total addition of

Rs.4,02,21,741/- and the matter is pending before the co-ordinate bench. The learned Assessing Officer, therefore, made once again the addition under Section 153A of the Act to the extent of Rs.1,68,63,358/-. This addition has already been made in the original assessment proceedings u/s 413 (3) and subject to appeal before CIT (A) and Now pending before ITAT, same could not have been repeated once again in assessment proceedings under Section 153A of the Act. In view of this, we direct the ld. Assessing Officer to delete the above addition of Rs.1,68,63,358/- on account of interest on PDC. Even otherwise this is a concluded assessment and same could have been tinkered only if any incriminating material found during the course of search. No such material was found during the course of search but the addition is made only for the reason that the ld. CIT (Appeals) has sustained the above addition in assessee's appeal against order under Section 143(3) of the Act. In view of this we direct the Assessing Officer to delete the addition of Rs.1,68,63,358/- once again made in the assessment pursuant to search. Thus Ground no 2 challenging above addition is allowed.

7. Per Ground no 3 , second addition / disallowance is made of Rs.1,20,312/- on account of violation of the provisions of Section 40A(3) of the Act. The assessee has found to have paid Rs.6,01,560/- to various farmers and agriculturists for purchase of land in cash. The ld. Assessing Officer noted that it is in violation of provisions of Section 40A(3) of the Act. The assessee submitted that the land was not purchased as stock-in-trade and the entire expenditure incurred is on behalf of a third party on behalf of whom the land was acquired. That party has reimbursed the complete sum to the assessee. Therefore, no expenditure is incurred in cash and claimed by the assessee as deduction. It was further stated that such purchase of land on behalf of third party is also not debited to the profit and loss account. However, the ld. AO held that this amount is in violation of Section 40A(3) of the Act and, therefore, disallowed 20% thereof amounting to Rs.1,20,312/-. The first contention of the assessee is that the above addition is not made on account of any incriminating material found during the course of search and, therefore, in view of the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla the addition cannot be made. On perusal of

the assessment order as well as the order of the ld. CIT (Appeals) we do not find that there is any reference to incriminating material found during the course of search. These are already part of the accounted entries in the books of accounts of the assessee. Therefore, in the absence of any incriminating material, respectfully following the decision of Hon'ble Delhi High Court in CIT Vs. Kabul Chawla, this addition deserves to be deleted. Even otherwise on the merits of the case the issue is squarely covered in favour of the assessee by the series of the decision of the co-ordinate bench as well as by the decision of the co-ordinate bench in assessee's own case for assessment year 2006-07 in ITA. No. 1747 and 1406/Del/2013 wherein similar addition has been deleted by the order dated 02nd January, 2015. In view of this we direct the ld. Assessing Officer to delete the addition of Rs.1,20,312/- made under Section 40A(3) of the Act. In view of this ground No. 3 of the appeal of the assessee is allowed.

9. Ground Nos. 1, 4 and 5 are general in nature and, therefore, same are dismissed.
10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on : 09/12/2020.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 09/12/2020

MEHTA

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	09.12.2020
Date on which the typed draft is placed before the dictating member	09.12.2020
Date on which the typed draft is placed before the other member	9.12.2020
Date on which the approved draft comes to the Sr. PS/ PS	9.12.2020
Date on which the fair order is placed before the dictating member for pronouncement	9.12.2020
Date on which the fair order comes back to the Sr. PS/ PS	9.12.2020
Date on which the final order is uploaded on the website of ITAT	9.12.2020
date on which the file goes to the Bench Clerk	9.12.2020
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	