

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: -CØ: NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1338/Del/2015
Assessment Year: 2006-07

Gitanjali Promoters Pvt. Ltd., Vs DCIT,
M-11, Middle Circle, Central Circle-32,
Connaught Circus, New Delhi.
New Delhi.

PAN : AABCG0237D

(Appellant)

(Respondent)

Assessee by	:	Shri Ajay Bhagwani, CA
Revenue by	:	Ms Sunita Singh, CIT-DR
Date of Hearing	:	21.12.2020
Date of Pronouncement	:	21.12.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 21.11.2014 passed by the CIT(A)-30, New Delhi, for assessment year 2006-07.

2. Facts of the case, in brief, are that the assessee is an associate of BPTP group of cases. A search and seizure operation was conducted at various premises of M/s BPTP and its group concerns and associated persons including the assessee on 7th December, 2010 and was finally concluded on 5th February, 2011. In response to notice u/s 153A issued on 11.01.2012, the assessee filed its return of

income on 1st February, 2012, declaring the total income at Rs.6,20,850/-. The AO completed the assessment at a total income of Rs.38,64,590/- wherein he made the following additions:-

- | | | | |
|----|---|---|----------------|
| a) | On account of interest on PDCs | - | Rs.11,42,122/- |
| b) | Disallowance on account of additional payment | - | Rs.14,63,252/- |
| c) | Disallowance u/s 40A(3) | - | Rs.6,38,364/- |

3. Vide order dated 21.11.2014, the CIT(A) deleted the addition of Rs.11,42,122/- on account of addition by way of interest on PDCs and Rs.14,53,252/- on account of disallowance of additional payments. He, however, sustained addition of Rs.10,000/- on account of additional payment and the disallowance u/s 40A(3) of Rs.6,38,364/-.

4. Aggrieved with such part relief granted by the CIT(A), the Revenue as well as the assessee preferred appeal before the Tribunal. The appeal filed by the Revenue, vide ITA No.1075/Del/2015, was dismissed on account of low tax effect. So far as the additions sustained by the CIT(A) are concerned, the assessee is in appeal before the Tribunal by raising the following grounds:-

01. 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. That the CIT(A) erred in utilizing the material seized in the course of search on BPTP group of cases (excluding appellant) on 15.11.2007 which did not belong to the appellant.

2.1 That on the facts and circumstances of the case and in law the CIT(A) has erred in holding that wherever the date of PDCs are extended, interest is to be taken to have been paid @ 15% p.a in cash outside the books of account and is to be treated as undisclosed income.

2.2 That no enquiries were made from any of the alleged recipients of the interest and none was confronted with the relevant document(s).

2.3 That the addition was unwarranted being based merely on surmises and conjectures without proof and corroboration by independent evidence.

3. 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.

3.1 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.

3.2 That without prejudice the CIT(A) erred in not himself quantifying the addition to be made.

4. That on the facts and circumstance of the case and in law the CIT(A) erred in sustaining the disallowance of Rs.6,38,634/- u/s 40A(3) of the IT Act despite the fact that no deduction in respect of said sum was claimed in the computation of income from business.

4.1 That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the disallowance u/s 40A(3) of Rs.6,38,634/- despite the fact that similar disallowance made under similar circumstances was deleted by ITAT vide order dated 22.08.2014 in ITA No.1752/Del/2013 in case of M/s Westland Developer Pvt., Ltd for the AY 2006-07 being a group company copy of which order was filed before the CIT(A) and whose facts were akin to the facts of the appellant company.

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.ö

5. The ld. Counsel for the assessee did not press grounds of appeal No.1, 2 and 5 for which there was no objection from the side of the ld. DR. Therefore, the above grounds are dismissed as not pressed.ø

6. Grounds No.3, 3.1 and 3.2 of the assessee relate to the disallowance of additional payment.

7. Facts of the case, in brief are that the AO made disallowance of Rs.14,63,252/- u/s 37 of the Act on account of additional payments for the purchase of land. The assessee challenged the same before the CIT(A) on the ground that the deduction on account of purchase of land having not been claimed by the assessee, no disallowance could have been made. The CIT(A) did not accept this contention and gave certain directions to quantify the disallowance to be made. The AO accordingly quantified the disallowance to be made and deleted the amount of rs.14,63,252/-, but, sustained the addition of Rs.10,000/-. It is the submission of the Id. Counsel that there is no violation of provisions of Stamp Duty Act as payment of additional payment is subsequent to registration of sale deed. Therefore, the provisions of section 37(1) are not applicable in the instant case.

8. The Id. Counsel for the assessee submitted that since the assessee has not claimed the expenditure, the same cannot be disallowed. Referring to the decision of the Tribunal in the case of another sister concern, namely, M/s Westland Developers Pvt. Ltd., for A.Y. 2006-07, he submitted that similar disallowance was partly confirmed by the CIT(A) and the Tribunal, vide order dated 22nd August, 2014, in ITA No.1752/Del/2013 for the A.Y. 2006-07, deleted the addition. Since the facts of the present case are identical to the facts of the case decided by the Tribunal in the case of one of the sister concerns and the assessment order as well as the appellate orders were passed by the same AO and the CIT(A), therefore, the

addition sustained by the CIT(A) should be dismissed. Referring to a series of other decisions in respect of various group concerns, the Id. Counsel submitted that identical addition has been deleted by the Tribunal. Even in a sister concern, namely, Vasundra Promoters Pvt. Ltd., the Revenue challenged the order of the Tribunal before the High Court and the Honøble High Court dismissed the appeal filed by the Revenue vide ITA No.211/2018 and CM Appeal No.6499-6500/2018, order dated 14th May, 2018. He accordingly submitted that this being a covered matter, the grounds raised by the assessee should be allowed and the addition sustained by the CIT(A) should be dismissed.

9. The Id. DR, on the other hand, strongly relied on the order of the lower authorities.

10. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We find, the AO, in the instant case, made a disallowance of Rs.14,63,252/- u/s 37 of the Act on account of additional payments for the purchase of land. We find, the Id.CIT(A) deleted the addition of Rs.14,53,252/- and sustained an amount of Rs.10,000/- which is the subject matter of appeal in the grounds of appeal. We find, identical issue had come up before the Tribunal in the case of Westland Developers Pvt. Ltd., in ITA No.1752/Del/2013, order dated 22nd August, 2014, wherein similar disallowance sustained by the CIT(A) was deleted by the Tribunal. We further find, the Tribunal in the case of Vasundra Promoters

Pvt. Ltd. had also deleted identical addition and the appeal filed by the Revenue was not admitted by the Honorable High Court as stated by the Id. Counsel and not controverted by the Revenue. Under these circumstances, we set aside the order of the CIT(A) and direct the AO to delete the addition of Rs.10,000/-.

11. Grounds No.4 and 4.1 relate to the order of the CIT(A) in sustaining the disallowance of Rs.6,38,634/- u/s 40A(3) of the Act.

12. Facts of the case, in brief, are that the AO, during the course of assessment proceedings, noticed that the assessee company has acquired various lands from farmers. From the details furnished by the assessee, the AO noted that out of the total sale consideration of Rs.11,08,95,752/-, an amount of Rs.31,91,818/- was paid in cash which is in contravention of section 40A(3) of the IT Act. He, therefore, asked the assessee to explain as to why the provisions of section 40A(3) should not be applied to the expenditure incurred by it in cash for acquiring the land from the farmers/villagers and why the same should not be disallowed. After considering the submission of the assessee and observing that similar addition was made by the AO in the case of Business Park Builders Pvt. Ltd. which was upheld by the CIT(A), the AO made addition of Rs.6,38,364/- being 20% of such payment made in cash for acquiring land in violation of provisions of section 40A(3) of the Act. In appeal, the Id. CIT(A) upheld the action of the AO.

13. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

14. We have considered the rival arguments made by both the sides and perused the orders of the lower authorities. We find, the AO in the instant case made an addition of Rs.6,38,634/- being 20% of the amount paid in cash for acquiring land which is in contravention of section 40A(3) of the Act which has been sustained by the CIT(A). We find, identical issue had come up before the Tribunal in the case of one of the sister concerns, namely, Designer Realtors P. Ltd. vs. DCIT in ITA No.1350/Del/2015, order dated 13th May, 2019, wherein similar disallowance was deleted by the Tribunal. The relevant observations of the Tribunal at para 5 and 6 read as under:-

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.ö

15. Similar disallowance made by the AO and sustained by the CIT(A) in other group concerns have also been deleted by the Tribunal in various other decisions copies of which are placed in the paper book. Since the issue stands decided in favour of the assessee by various decisions of the coordinate Benches of the

Tribunal, therefore, respectfully following the same, we set aside the order of the CIT(A) on this issue and direct the AO to delete the addition. The grounds raised by the assessee are accordingly allowed.

16. In the result, the appeal filed by the assessee is allowed.

Order was pronounced in the open court at the time of hearing itself i.e., on 21.12. 2020.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 21st December, 2020.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi