

**INCOME TAX APPELLATE TRIBUNAL**  
**[DELHI BENCH “C”: NEW DELHI]**  
**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**  
**AND**  
**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**  
**(Through Video Conferencing)**

ITA No. 1405/Del/2013  
(Assessment Year: 2007-08)

ACIT, Central Circle-23, New Delhi	Vs.	Glitz Builders & Promoters Pvt. Ltd, M-11, Middle Circle, Connaught Circus, New Delhi <b>PAN: AABCG9331N</b>
(Appellant)		(Respondent)

ITA No. 1751/Del/2013  
(Assessment Year: 2007-08)

Glitz Builders & Promoters Pvt. Ltd, M-11, Middle Circle, Connaught Circus, New Delhi <b>PAN: AABCG9331N</b>	Vs.	ACIT, Central Circle-23, New Delhi
(Appellant)		(Respondent)

Revenue by :	Ms. Meenakshi Goswani, CIT DR
Assessee by:	Shri Ajay Bhagwani, CA
Date of Hearing	10/12/2020
Date of pronouncement	27/01/2021

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

01. ITANo 1751 (Del) of 2013 is filed by the assessee and ITA. No. 1405 (Del) of 2013 is filed by the ld. Assistant Commissioner of Income Tax , Central Circle-23, New Delhi [ The ld AO] against the order of the ld Commissioner of Income Tax ( Appeals) -XXXIII, New Delhi [ Ld CIT (A) ] dated 17.12.2012 for the Assessment Year 2007-08
02. The grounds of appeal raised in both these appeals are as under:-

**ITA. No. 1751 (Del) of 2013 [By Assessee]:**

“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) 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 action of the Assessing Officer in relying upon the material seized in the case of search on M/s BPTP group of cases despite:-*
  - i) *that such material had no nexus/relevance with the case of the appellant and,*
  - ii) *that, the CIT(A) himself holding that such material did not belong to the appellant.*
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 prove 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.*
5. *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.*

03. **ITA. No. 1405 (Del) of 2013 [ By The AO] :**

- “1. *On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 2,32,73,775/- out of total addition made of Rs. 4,02,21,741/- made by the Assessing Officer on account of interest on PDCs paid out of books of account.*
2. *On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 2,31,249/- out of total addition made by the*

*AO of Rs. 21,31,249/- made by the Assessing Officer in view of the provisions of section 37(1) of the Income Tax Act, 1961 on account of additional payment in violation of Stamp Duty Act, 1899.”*

04. The brief facts of the case show that Assessee is a Company belonging to BPTP Group. It filed its return of income on 23.10.2007 declaring 'NIL' income. The assessment under Section 143(3) of the Income Tax Act, 1961 (the Act) was passed on 29.12.2009 determining the total income of the assessee at Rs. 4,23,52,990/-. The Id. Assessing Officer made an addition of
- a. Rs. 4,02,21,741/- on account of interest on post-dated cheques and
  - b. Rs. 21,31,249/- on account of disallowance of additional payment.
05. The assessee-preferred appeal before the Id. CIT (Appeals) who held that in case of post dated cheques' interest; the AO is directed to re-compute interest of the post dated cheques after six months from the date of issue of such cheques. Regarding the additional payments of Rs. 21,31,249/-, he held that the additional payment is made by the Appellant company to the seller of land on account of enhanced rate of land at the time of realization of post dated cheques. However, he held that additional payment made to the owner of the land or to his relatives who have some legal claim over such land paid by way of account payee cheque is allowable as expenditure under Section 37 of the Act. With respect to other payment, he held that if any legal right does not support such payments over the land, it is not allowable, and he confirmed disallowance of such payment.
06. Before the Id. CIT (Appeals) assessee also challenged against the assumption of jurisdiction for passing assessment order under Section 143(3) of the Act. The claim of the assessee is that Assessing Officer has utilized the documents seized at the premises of BPTP Group during search proceedings under Section 132 of the Act, which are belonging to the assessee. Therefore, the right course of action that should have been to invoke the provisions of Section 153C of the Act instead of passing an assessment order under Section 143(3) of the Act. The assessee further supported the same with the decision of the Hon'ble Delhi High Court in the case of SSP Aviation Ltd. vs. DCIT dated 29 March 2011. Assessee also argued that a provision of Section 153C of the Act is only section under which assessment can be made. The Id. CIT (Appeals) noted that the Assessing Officer has utilized the documents seized from the premises of BPTP Ltd. and group concerned. However, none of these documents belongs to the Appellant Company. He further noted that the group company and other associate companies have shown trend of un-accounted expenditure in the form of PDC

interest and some form of additional payment for acquisition of land. He, therefore, held that the action of the Id. AO in making an assessment under Section 143(3) of the Act is proper. His findings are recorded in para No. 5.3 of his order as under:-

*“ 5.3 A perusal of the Assessment order, it reveals that seized material has been relied upon to get general trend of the group companies as the whole group is managed by the promoter Sh. Kabul Chawla Nowhere, finding has been given by assessing Officer that certain seized material belongs to the appellant company in fact, in my opinion as a result of Search & Seizure operation, there may be three types of seized document. One belonging to the person searched, the income of which will be assessed us 153A. In second category the seized document belonged to other person, such assessment will be made u/s 153C, and third category of documents establishes a general type of finding which is applicable for assessing income to a group of cases. In the case of third category, search assessment u/s 153A or 153C cannot be invoked in respect of cases not covered u/s 153A. Therefore, such income is to be assessed in normal provision of Act either u/s 143(3) or 147 of I.T. Act, 1961. If any evidence is found, though not belonging to other person, but income but income has to be assessed in the hands of other person. To strengthen my view, I rely on the judgment of Hon'ble apex court in the case of Pooran Lal Vs. CIT (1974) 093 ITR 0505 (SV) where Hon'ble Supreme Court has held that material obtained from search even where search is made in contravention of provision can be used for making assessment. Therefore, the emphasis of Hon'ble Supreme Court is assess income from the material seized as a result of search. Entire argument and judicial pronouncement relied upon by Ld AR is that A.O. should have invoked Sec 153C without which no addition can be made on the basis of seized material. In my view, these judicial pronouncements is not applicable on the case where seized material is not belonging to other persons but inference can be drawn for generation income either direct or deemed or disallowance of expense in the hand of other person. Therefore, as discussed above, the argument of Id. AR is not accepted on challenging jurisdiction of A.O. for making assessment u/s 143(3). Accordingly this ground is dismissed.”*

07. Therefore, now assessee and Revenue both are in appeal before us.
08. First coming to the appeal of the assessee wherein Ground No. 1 challenges that the action should have been taken under Section 153C and not u/s 143(3) of the Act. The Id. AR submitted that a search under Section 132 was carried out on 15.11.2007 on BPTP Company. However, no search was carried out on the assessee. The assessee filed its return of income for Assessment Year 2007-08 on 23.10.2007. He referred to para Nos. 5.2 and 5.3 of the order of the Id. CIT (Appeals) wherein it has been held that the Id. AO has utilized the documents seized in the course of that search. CIT (Appeals) also noted that there is no finding of the AO that the seized material belongs to the Appellant. He submitted that above

observation of Id. CIT (Appeals) is totally incorrect. He stated that on page No. 14 to annexure A-1 there is a specific reference of cheque which was issued by the assessee and its copy found belongs to the assessee. He further referred to page 79 of the assessment order wherein the cheque of the assessee is mentioned. He submitted that the assessee issued all these cheques. He further referred to several seized documents mentioned in the assessment order, which mentions the name of the Appellant. He, therefore, submitted that there is material, which was found during the course of search, and addition has been made based on seized documents under Section 143(3) of the Act, but the law required the assessment to be made under Section 153C of the Act. He thereafter referred to the provisions of Section 153C of the Act and advocated that the assessment passed under Section 143(3) of the Act is invalid.

09. He further referred to the several orders passed by the same CIT (Appeals) wherein on identical facts and circumstances the assessments were annulled on the ground that the assessment made by utilizing the record seized under Section 132(2) of the Act, which belong to the assessee were wrongly passed under Section 143(3) of the Act instead of 153C of the Act. He also placed on record 3 such orders passed. He further relied upon the decision of Hon'ble Delhi High Court in CIT Vs. RRJ Securities and referred to para Nos. 13, 15, 20, 21 and 22 of that order. He also relied upon the decision in the case of Abhay Kumar Shroff Vs. CIT 162 Taxman 429 (Jharkhand) also. Therefore, he submitted that the assessment requires to be annulled in this case. He further relied upon the decision of the Hon'ble Delhi High Court in Ssp Aviation Ltd. Vs. DCIT (supra). He also relied upon the decision of the co-ordinate bench in ITA. No. 1468 (Del) of 2013 dated 5.09.2014 wherein in para 6 the co-ordinate bench noted that when on materially identical set of facts similar relief granted by the CIT (Appeals) was accepted by the Revenue authorities and the matter reached finality by not challenging the same in appeal closes the issue in favour of the assessee. He submitted that no orders of the Id. CIT (Appeals) were challenged before the co-ordinate bench on this issue. He further submitted the copies of the orders of the CIT (Appeals) at page Nos. 197 to 228 of the paper book. In view of this, he submitted that on this jurisdictional ground the appeal of the assessee should be allowed.
10. He also referred from his submission as under :-

*“5. The CIT(A) upheld the assessment made u/s 143(3) by giving the following solitary reason in paras 5.2.2 & 5.3:-*

*Para 5.2.2*

*“Undoubtedly AO has utilized the document seized from the premise of BPTP Ltd and Group companies. However, the assessment order*

*nowhere mentions that any part of the seized material belong to the appellant company"*

*Para 5.3*

*"Nowhere finding has been given by the Assessing Officer that certain seized material belongs to the appellant company"*

*6.1 The CIT(A), it is respectfully submitted, went totally incorrect on facts as we shall demonstrate in some details hereunder:*

*6.2 The appellant filed copies of all seized documents used, referred and relied by Assessing Officer before CIT(A) during the course of first appellate proceedings.*

*6.3 The CIT(A) has dealt with each and every document which relates to issue of interest paid on PDCs in para 6.3 of his order (heading "findings on seized material"). A compilation of the seized documents examined and commented upon by the CIT(A) is at pages 86-123 of Paper Book. Out of total seized documents used, referred and relied by AO in the assessment order, some specific seized documents belong to the assessee company having following description:-*

*a) "Page 14 of Annexure A1 Page 14 Page 118 and 124 of Paper Book*

*This is a copy of cheque No. 199323 issued on 10.11.2006 in favour of Jagdev Alias Jaggi on CITI Bank for Rs. 1,26,35,000/-. The cheque is issued, as is printed on it, by Glitz Builders and Promoters Pvt. Ltd (the assessee) and unequivocally and admittedly belong to the assessee. The date of the cheque has been extended to 10.08.2007 and again to 10.11.2007.*

*Note I: This cheque is referred and relied by the AO at internal page 9 of the assessment order as under:-*

*"Pages 12,13,14 & 15 of Annexure A-1 of Party BO-III, (office of BPTP Group located at B-1/A-5, Mohan Ind. Cooperative Estate, New Delhi) shows that the dates of the post dated cheques issued by various group companies are repeatedly extended by several months. Page No.13 contains the details of post dated cheque issued in the name of Sh. Jaipal from whom land was purchased." (emphasis supplied)*

*As stated supra the copy of cheque at page 14 is the cheque issued by the assessee company*

*Note II: This very page is also referred by the CIT(A) in his order at page 14 in*

*para 5.3(xx) as under:-*

*"(xx) Page 12,13,14 & 15, A-1, BO-III*

*These pages contain copy of cheque issued by M/s Shalimar Town Planners Pvt. Ltd where date of issue of cheque has been extended"*

*There is inadvertent mistake on the part of CIT(A) in mentioning about the cheques issued by Shalimar Town Planners Pvt. Ltd which are at pages 14 & 15 as against cheques issued by several other companies like assessee., M/s Glitz Builders and Promoters Pvt Ltd, M/s Countrywide Promoters Pvt. Ltd, M/s Dynasty Construction Pvt. Ltd, M/s Fragrance Construction Pvt. Ltd. Copies of these seized documents are at pages 116-119 of Paper Book. Nevertheless the CIT(A) has noted in para 5.3(xx) in respect of Page 14 which, page inter alia, contains the copy of cheque issued by M/s Glitz Builders and Promoters Pvt. Ltd, which means that he has taken cognizance of this seized document. However inadvertently mentioned to have been issued by M/s Shalimar Town Planners Pvt. Ltd instead of various other companies including assessee.*

*Beside seized document Page 14, Annexure-A-1, Party BO-III, the AO has used, referred and relied upon the following seized documents in assessment order which mention name of appellant. Page 70, Annexure-A-1, Party BO-I of the seized document is at page 93 of Paper Book.”*

11. The ld. DR vehemently submitted that in case of a group concern Remarkable Estate Pvt. Ltd., the ITAT decision dated 15.02.2017 clearly covers the issue against the assessee wherein identical ground was raised and it was dismissed.
12. The ld AR in rejoinder submitted that in ITA. No. 1747 (Del) of 2013 for Assessment Year 2006-07 though identical ground was raised, however, it were not challenged and, therefore, it does not lay down any precedence.
13. We have carefully considered the rival contentions and orders of the learned that lower authorities. Admittedly, assessment in challenge before us has been passed under the provisions of Section 143 (3) of the income tax act. According to provisions of Section 153C of the act, it is provided that where the assessing officer is satisfied that any books of accounts and documents seized or requisitioned belongs or belong to a person other than the person referred to in Section 153A, and then AO shall proceed to assessee person according to the provisions of chapter XIV of the act. We first examine the issue whether any material belonging to the assessee was found during the course of search or not. The page number 14 of annexure A – 1, which is placed at page number 15 of the paper book, is a copy of post dated cheque issued by the assessee in favour of “ Jagdev Alias Jaggi” bearing cheque number 199323 dated 10/11/2006 which was renewed for twice. The cheque number 479405 of Citibank also issued another cheque in the same name. Another cheque is also found on the same page in favour of Mr. Sohanpal. Based on these cheques (post dated), the addition has been made in the hands of the assessee. Therefore, it is apparent that a copy of the cheque issued by the assessee in favour of the third party found from the premises of altogether a different party naturally belongs to the assessee. The original cheque belongs to

the person in whose name such act is drawn and further a copy of such cheques belongs to the person who issued them. Therefore, naturally the documents belonging to the assessee were found from the premises of the third party during the course Of Search. Based on these documents the additions are made in the hands of the assessee. Therefore, the only option available with the assessing officer is to proceed u/s 153C of the act. We find that in para No. 6.3 of the order of the Id. CIT (Appeals) he has dealt with seized materials starting from page No. 8 to page No. 15. Further, the Id. AO after recording all the seized material in the body of the assessment order stated that there are number of other seized documents, which proves that assessee has made payment of interest to the beneficiaries. In para 2.4 of the assessment order also the Id. AO noted that though assessee has denied that there are no incriminating documents seized for payment of interest on post dated cheques, the Id. AO has materially tabulated that there are incriminating documents in the form of post dated cheques based on which the addition is made. Some of these cheques are found during the course of search in case of a third party. Therefore, apparently the assessment is required to be made under the provisions of Section 153C of the act.

14. Before us the learned authorised representative has placed copies of the order of CIT – A in case of Anjali Promoters And Developers Private Limited for assessment year 2007 – 08 in appeal number 525/09 – 10/313 dated 27/05/2013, Appeal Number 438 – 0809 – 234 dated 28/11/2012 in case of Poonam Promoters And Developers Private Limited for assessment year 2006 – 07, order of the learned CIT – A in appeal number 436/08/09/232 dated 28/11/2012 in case of Countrywide promoters private limited for assessment year 2006 – 07 and order of the learned CIT – A in appeal number 490/09 – 10/279 dated 27/5/2013 in case of Super Belts private limited for assessment year 2007 – 08. In all these cases the learned CIT – A has held that the assessment should have been passed u/s 153C of the income tax act instead of u/s 143 (3) of the act. These orders have been passed by the same Commissioner of income tax (appeals) who passed the order in case of the assessee holding an altogether different view that on the similar documents seized, the assessment has correctly been made by the learned assessing officer u/s 143 (3) of the act. It is stated before us that the revenue against the orders of the learned CIT has filed no appeal – A in those cases as those are also the assessee is belonging to the same group.
15. In I.T.A. No.: 1468/Del/2013 Assessment year: 2009-10 in Joint Commissioner of Income Tax Range 1, Noida Vs. Ved Prakash Sachdeva dated Sept 05, 2014 coordinate bench has held that :-
  - “4. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position.

5. We find that Hon'ble Supreme Court, in the oft-quoted case of Radhaswami Satsang Vs CIT (193 ITR 321), has, inter alia, observed as follows:

8. One of the contentions which learned senior counsel for the assessee appellant raised at the hearing was that, in the absence of any change in the circumstances, the Revenue should have felt bound by the previous decisions and no attempt should have been made to reopen the question. He relied upon some authorities in support of his stand. A Full Bench of the Madras High Court considered this question in T.M.M. Sankaralinga Nadar & Bros. vs. CIT (1929) 4 ITC226. After dealing with the contention, the Full Bench expressed the following opinion:

"The principle to be deduced from these two cases is that where the question relating to assessment does not vary with the income every year but depends on the nature of the property or any other question on which the rights of the parties to be taxed are based, e.g., whether a certain property is trust property or not, it has nothing to do with the fluctuations in the income; such questions, if decided by a Court on a reference made to it would be res judicata in that the same question cannot be subsequently agitated."

One of the decisions referred to by the Full Bench was the case of Hoystead vs. Commissioner of Taxation (1926) AC 155 (PC). Speaking for the Judicial Committee, Lord Shaw stated:

"Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions as to what should be a proper apprehension by the Court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted, and there is abundant authority reiterating that principle. Thirdly, the same principle—namely, that of a setting to rest rights of litigants, applies to the case where a point, fundamental to the decision taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough

that subsequent light or ingenuity might suggest some traverse which had not been taken."

These observations were made in a case where taxation was in issue. This Court in *Parashuram Pottery Works Co. Ltd. vs. ITO* 1977 CTR (SC) 32: (1977) 106 ITR 1 (SC) stated:

"At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity." Assessments are certainly quasi-judicial and these observations equally apply.

9. We are aware of the fact that, strictly speaking, *res judicata* does not apply to IT proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. One these reasonings, in the absence of any material change justifying the Revenue to take a different view of the matter—and, if there was no change, it was in support of the assessee—we do not think the question should have been reopened and contrary to what had been decided by the CIT in the earlier proceedings, a different and contradictory stand should have been taken. (Emphasis by underlining supplied by us)

6. We have noted that on materially identical set of facts, similar relief granted by the CIT (A) was accepted by the revenue authorities and the matter was allowed to reach finality by not challenging the same in appeal. We have also noted that it is a factual issue and there is no change in the facts or in the legal position. In these circumstances, and in the absence of any specific reasons for deviation of stand by the revenue authorities for this assessment year, we are of the considered view that the Assessing Officer was indeed not justified in

raising these grievances against correctness of learned CIT(A)'s order. We, therefore, dismiss the grievances raised by the Assessing Officer for these short reasons alone, and decline to deal with the merits of these grievances. The preliminary objection raised by the learned counsel is indeed well taken and we approve the same”

16. Thus, when revenue has not challenged the order of the learned CIT – A on identical facts and circumstances in case of other assesseees of the same group, the revenue cannot say that the order of the learned CIT – A is incorrect as it has already accepted by the revenue is correct by not filing an appeal before the coordinate bench.
17. Accordingly ground number [1] of the appeal of the assessee contesting that the assessment order made by the assessing officer was bad in law and void ab initio on the ground that it was to have been made u/s 153C of the income tax act and not, as was u/s 143 (3)/147 of the income tax act 1961 is allowed.
18. As we already allowed ground number one of the appeal of the assessee, ground number 2 – 5 of the appeal are not required to be adjudicated.
19. In the result ITA number 1751/del/2013 filed by the assessee is allowed.
20. In view of our decision in ground number [1] of the appeal of the assessee, ITA number 1405/del/2013 filed by the learned assessing officer is dismissed.
21. In the result, appeal of assessee is allowed and appeal of Ld AO is dismissed.

Order pronounced in the open court on: 27/01/2021.

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated: 27/01/2021.

\*MEHTA\*

Copy forwarded to :

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	27.01.2021
Date on which the typed draft is placed before the dictating member	27.01.2021
Date on which the typed draft is placed before the other member	27.01.2021
Date on which the approved draft comes to the Sr. PS/ PS	27.01.2021
Date on which the fair order is placed before the dictating member for pronouncement	27.01.2021
Date on which the fair order comes back to the Sr. PS/ PS	27.01.2021
Date on which the final order is uploaded on the website of ITAT	27.01.2021
date on which the file goes to the Bench Clerk	27.01.2021
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	