

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
DR. B. R. R. KUMAR, ACCOUNTANT MEMBER**

I.T.A. No. 1349/DEL/2015 (A.Y 2006-07)

(THROUGH VIDEO CONFERENCING)

ASG Overseas Pvt. Ltd. M-11, Middle Circle, Connaught Circus New Delhi AACCA9248D (APPELLANT)	Vs	Deputy Commissioner of Income Tax Central Circle-32 New Delhi (RESPONDENT)
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Appellant by	Sh. Ajay Bhagwani, CA
Respondent by	Sh. V. K. Kataria, Sr. DR

Date of Hearing	18.02.2021
Date of Pronouncement	05.03.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 21/11/2014 passed by CIT(A)-XXX, New Delhi for assessment year 2006-07.

2. The grounds of appeal are as under:-

1. *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.*
2. *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.5,08,000/- 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.5,08,000/- 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.”

3. On 15/11/2007 a search u/s 132 was carried out on BPTP Group of Cases which did not include Assessee Company as per the assessee's contention. No proceedings u/s 153C were taken in pursuance of such search in the case of assessee and evidently no document or material was found belonging to the assessee. Thus, neither notice u/s 153A nor u/s 153C was issued to the assessee. Another search u/s 132 was carried out on BPTP group of cases including Assessee Company on 7/12/2010. Notice u/s 153A was issued on 11/1/2012 to the assessee in response to which return was filed on 30/1/2012. In the course of proceedings u/s 153 A, the Assessing Officer issued a questionnaire on 30/07/2012 thereby asking details and justification of additional payments paid by the assessee company during the Financial Year 2005-06 along with supportive documentary evidence in the format given by the Assessing Officer. The Assessing Officer also asked for details and justification of PDCs if any interest thereon paid by the assessee during the Financial Year 2005-06 along with supportive documentary evidence. The assessee company filed its objections to the Assessing Officer and the same was not addressed by the Assessing Officer at the time of assessment proceedings or at the time of assessment order. The Assessing Officer made addition of Rs. 17,65,863/- on account of interest paid in cash on PDCs outside of its books of accounts. The Assessing Officer further made addition of Rs. 32,10,715/- on account of additional payment held to be non genuine and disallowance of Rs. 5,08,000/- u/s 40A(3) on the basis of order of the CIT(A) in another case i.e. Business Park Promoters Pvt. Ltd. for Assessment Year 2006-07 dated 24/12/2012.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that there was no seized document or incriminating document. Hence, the decision of the Hon'ble Delhi High Court in case of CIT(A) vs. Kabul Chawla (2016) 380 ITR 573 (Delhi) will be applicable in the present case. On merit, the Ld. AR relied upon the evidences filed before the authorities.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The very basis of the assessment order was related to search and seizure operation conducted on BPTP Group which did not include the assessee on 15/11/2007 and there was no incriminating or seized documents found during the search which belong to the assessee. Besides this, the Assessing Officer has made the additions which was not the subject matter of the reopening. Hence, the decision of the Hon'ble Delhi High Court in case of Kabul Chawla (supra) is applicable in assessee's case. The Ld. AR also relied upon the decision of Principal CIT Vs. Vasundhra Promoters Pvt. Ltd. ITA No. 211/2018 order dated 14/5/2018 whereby the issue of interest paid in cash in respect of PDCs outside books of accounts was dealt by the Hon'ble Delhi High Court and Revenue's appeal was dismissed. In-fact, the additions made by the Assessing Officer were on the assumption basis and are not emerging from the basis of the search material which was not at all relevant in assessee's case. As regards additional payment and disallowance u/s 40A(3) of the Act, the evidence produced before the Assessing Officer and the CIT(A) was not taken into account by both the Revenue Authorities. In fact, the entire expenditure incurred on purchase of land was reimbursed to the assessee by M/s Country vide Promoters Pvt. Ltd. and the amount paid in cash was not debited to the Profit and Loss account and was not claimed as expenditure by the Assessee. Thus, reimbursement cannot be treated as revenue receipts. Hence, on the legal issue as well as on the merit, the assessee succeeds.

8. In result, appeal of the assessee is allowed.

Order pronounced in the Open Court on this 05th Day of March, 2021.

**Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 05/03/2021
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI