IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI

Before Sh. K. N. Chary, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6343/Del/2013: Asstt. Year: 2007-08

Asstt. Commissioner of Income Tax, Central Circle-23, New Delhi-110055	Vs	M/s Countrywide Promoters Pvt. Ltd., M-11, Middle Circle, Connaught Circus, New Delhi-110001
(APPELLANTT		**(RESPONDENT)**
PAN No. AAACC5280H		

ITA No. 6304/Del/2013 : Asstt. Year: 2007-08

M/s Countrywide Promoters Pvt. Ltd., M-11, Middle Circle, Connaught Circus, New Delhi-110001	Vs	Asstt. Commissioner of Income Tax, Central Circle-23, New Delhi-110055
(APPELLANTT		**(RESPONDENT)**
PAN No. AAACC5280H		

Assessee by : Sh. Ajay Bhagwani, CA
Revenue by : Ms. Nidhi Srivastava, CIT DR

Date of Hearing:07.04.2021		**Date of Pronouncement: 04.05.2021**

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the revenue and the assessee against the orders of the ld. CIT(A)-XXXII, New Delhi dated 16.07.2013.

2. The brief facts of the case are that the assessee is a part of the BPTP group and engaged in the business of land aggregation and consolidation. A search u/s 132 of the Income Tax Act, 1961 was conducted on the BPTP group and some other

companies on 15.11.2007. Assessment in the case of the assessee has been completed u/s 153A.

3. The appeals of the revenue and the assessee consist of following grounds:

1. Interest on PDC paid outside the books of accounts
2. Additional payment made in violation of Stamp Duty Act

4. The appeal of the assessee comprises the following grounds:

1. Disallowance u/s 40A(3) of Rs.1,70,875/-
2. Addition of Rs.25,00,000/- and Rs.12,25,000/- on account of seized material

5. Heard the arguments of both the parties and perused the material available on record.

6. The issue of PDC and additional payments have been dealt by a number of cases pertaining to the group, the various Co-ordinate Benches of the Tribunal on the similar facts of the cases. For the sake of ready reference, the relevant order in the case of Vasundra Promoters (P) Ltd. in ITA No. 1527 & 1758/Del/2013 for the assessment year 2006-07 is reproduced herewith:

> *"2. We will first take up Revenue's appeal in which following grounds have been raised:-*
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> *"1. On the facts and in the circumstances of the case, the CIT(A.) has erred in deleting the addition of Rs. 27,11,797/ 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. 1,05,86,958/- 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.

3. The order of the CIT(A) is erroneous and is not tenable on facts and in law.

3. The brief facts and background of the case qua the first issue is that, the assessee company belongs to BPTP group which are mainly engaged in the business of real estate developers in the NCR region and other parts of the country. A search and seizure operation was carried out on the group companies of BPTP on 15.11.2007, during the course of which certain documents were found and seized which revealed that these group companies had purchased huge part of land in different villages of Faridabad. The seized documents indicated a business model wherein only part payment of sale consideration in respect of land were paid at the time of execution of sale deed and the balance sale consideration, was made through postdated cheques (PDCs). For the intervening period, i.e., period between the date of sale deed and the date of encashment of PDCs, interest was paid in cash to the Vendors of the land by the vendee company on monthly basis @ 1.25% per month on the amount of PDC. During the course of post search enquiry, it was noticed that the said payment of interest by the vendee company in cash has not been accounted for in the books of the account. The ld. Assessing Officer relying on these seized documents held that the interest expenditure is nothing but undisclosed expenditure of the assessee. After relying upon the decision of Hon'ble Supreme Court in the case of H.M. Esufali H.M. Abduli Vs Commissioner of Sales Tax, (1973) ITR 271, the Assessing Officer held that the interest payment in cash to the vendors on the amount of PDCs should be calculated @ 15% per month (i.e. 1.25% per month) which he treated to be expenditure outside the books of accounts and accordingly, computed the interest

amount to be added at Rs.27,11,797/-. The detailed discussion of the Assessing Officer in this regard appears from pages 2 to 12 of the assessment order.

4. Before the ld. CIT (A), the assessee's case on merits was that postdated cheques (PDCs) were part and parcel of the terms of sale deed, therefore, there was no question of payment of interest on PDCs. The Id. CIT (A) after considering fee findings of the Assessing Officer as well as the entire seized material on this count came to the following conclusions which are being summarized as under:-

(i) The analysis of the seized documents reveals that interest has been paid on PDCs and there are vouchers found which proves that recipient has signed on vouchers for receipt of the interest and the amounts are specific with calculation of 15% per annum.

(ii) There is a clear evidence of receipt of interest for extension of period of PDCs and the arguments of the assessee that the calculation of interest of PDCs has been considered while entering into the agreement holds some logic but when the date of PDCs are extended, definitely the recipient will demand for some additional compensation in the form of interest. There is evidence which proves that interest is paid from the date of sale to date of encashment of PDCs. However there is concrete evidence in the form of seized material to show that interest is paid and received by seller on the extension of PDGs. Thus, interest on PDCs to the extent of extended period appears to be quite reasonable and logical and accordingly, he held that interest, of PDCs either a sale consideration or additional payment may be recomputed to the extent of extended period of PDCs by the Assessing Officer and to the extent that the extension made by the Assessing Officer.

ii) This formula and arrangement is applicable in all the group companies of BPTP as they are closely linked.

(iv) Lastly, he concluded as under:

"If it is not possible to work out the extension of PDCs in each case then Assessing Officer, is directed to recomputed interest on PDCs after six months from date of issue of PDCs i.e. date of sale, as six months is taken as reasonable period for giving PDC as per sale deed. This view is formed, on the basis the statement of Sh. Chhotu Ram whim says that normally PDCs are given for 8 to 10 months. Further Id. AR has also submitted few Sale Deed in respect of some of Seized record in the case of Ramvati Beeroete where the interest working is made after 9/15 months. Taking these facts into consideration, it would be proper to compute interest after 6 months from date of sale on conservative side. Accordingly this ground is partly allowed.

5. Before us the ld. Sr. DR after referring to the various observations made by the Assessing Officer as well as by the ld. CIT (A), submitted that the Id. CIT (A) has though confirmed many of the observations of the Assessing Officer, however at the end he has set aside the matter to the Assessing Officer to work put the interest on PDCs after 6 months date of issue of PDCs. This direction of the Id. CIT(A) tantamount to setting aside of the assessment order which is beyond the power of CIT(A).

5. On the other hand, the Id. counsel for the assessee submitted that this issue had come up for consideration in many of the group companies of the assessee, wherein the order of the ld. CIT (A) on exactly similar direction has been confirmed. He strongly referred and relied upon the decision in the ease of M/s. AIG Promoter & Developers Ltd., in ITA No. 1674/Del/2013 for A.Y. 2008-09 and placed reliance on following observations:

"We have heard the arguments of both the sides and perused, relevant material placed before us. At the outset, the ground raised by the Revenue is misconceived because learned CIT(A) has not deleted

the addition of Rs.75,06,625/- but has only directed to recalculate the interest We have carefully, gone through the order of the learned CIT(A) and also the submissions of both, the parties and we do not find any infirmity in the order of the learned CIT (A). After examining the loose papers Seized at the time of search at the assessee's premises, it was noticed that interest is paid on the PDCs only during the period of extension of PDCs and, therefore, he directed the Assessing Officer to re-compute the interest on PDCs at the time of extension of the PDCs. He has further observed that if it is not possible to work out the extension of PDCs in each case, then the Assessing Officer is directed to recomputed interest on PDCs after six months from the date of Issue of the PDCs. Therefore, the ground of appeal of the Revenue that the CIT(A) deleted the addition of Rs.75,06,625/- made by the Assessing Officer on account of interest on PDCs is factually incorrect and contrary to the order of the CIT(A). The CIT(A) directed to recalculate the interest on PDCs and there was a sound logic for such direction. His direction is based on material found and seized at the time of search, in view of the above, we do not find any justification to interfere with the order of learned CIT(A) in this regard and accordingly, we reject ground No. 1 of the Revenue's appeal."

Thus, he submitted that this issue stands squarely covered by Tribunal order, therefore, the ground raised by the Revenue should be dismissed.

6. After considering the rival submissions and on perusal of the impugned order, we find that, the Id. CIT(A) first of all has held that interest on the PDCs to the extent of extension period is rightly being held to be unaccounted expenditure, however, he has directed the Assessing Officer to re-compute the interest on PDCs after the period of six months from the date of issue of PDCs, i.e., date of sale. Beyond, the period of six months the interest should be added as unexplained expenditure. This finding of the Id. CIT(A) is based on analysis of various seized documents referred to by him in his order and after

considering the entire gamut of material and explanation of the assessee that there was some extension of reasonable time for giving the PDCs as mentioned in the sale deed itself. The reasonable period too has been worked out by him on the basis of material only as gathered during the course of search. Hence such a direction of Ld. CIT (A) to compute the interest after six month from the date of sale cannot be altered without any contrary material. Further, this issue stands squarely covered by the various decisions of the Tribunal in the group companies as relied upon by the Id. counsel. Hence in view of binding judicial precedents on the same set of facts, we do not any merit on the ground raised by the Revenue and hence, same is dismissed.

7. As regards the second issue, relating to addition of Rs.1,05,86,958/- on account of additional payment made to various farmers/ land owners, the brief facts are that, the assessee company purchased land from farmers/ land owners and transfer the same to one of the flagship company of BPTP group, viz., M/s. Country Wide Promoters Pvt. .Ltd., (CWPPL) under the collaboration agreement for development. For arranging the land the assessee company receives Rs. 35,000/- per acre from CWPPL which is over and above the cost of land, reimbursed by CWPPL. The Id. Assessing Officer noted that BPTP group has given more than Rs. 45.02 crores to the vendors of the land which is over and above the sale consideration and these payments has been made much after the execution, of the sale deed. He noted that in the present, case also the additional payment made to various persons over and above sale consideration aggregated to Rs. 1,05,86,958/-. Before the Assessing Officer the assessee made various contentions, firstly, the agreement for the purchase of land is agreed with one person but other members of the family had also therefore, to settle the same, additional compensation is paid; secondly, the BPTP is developing township over thousand acres, therefore, various spurious and non serious agreements are entered with the farmers sand in order to settle such cases the payments are made;

thirdly, often payments are made through PDCs and at the time of encashment there is considerable escalation in prices and therefore, there is always raise in the claim for the compensation of delayed payment; fourthly, the additional compensations are given for tube wells, trees and other super structure etc., as per demand made by the land owners; fifthly, the payments have been made for commercial expediency and alt the payments are genuine; sixthly, the cyclostyled receipts does not results in roads in the genuineness and factum of payments; and lastly, the additional payments should not be considered for purchase of land but it is an extra expenditure for obtaining the title of the land.

8. However the Assessing Officer did not accept the aforesaid contention and after detailed reasoning and rebutting each and every contention of the assessee, held that such a payment, cannot be considered for acquisition of the land and .same cannot be allowed u/s 37(1); and also held that additional payment is violation of Stamp Duty Act, therefore, such an expenditure is also hit by Explanation to section 37(1). The Assessing Officer, further observed that there is violation of section 40A(3) on certain payments exceeding to Rs. 20,000/, but did not made any separate addition because already the entire addition was been made by him.

9. The Id. CIT(A) after considering the various facets of assessee's arguments and finding of the Assessing Officer, first of all rejected the assessee's contention that the said amount of additional payment cannot be disallowed, because, the assessee has not claimed any such expenditure in the profit and loss account. The reasoning given by him was that as per the collaboration agreement, assessee would acquire the land and transfer 100% of development right to M/s. CWPPL. Thus, the cost of the land is expenditure in the hands of the assessee. Regarding allowability of the said expense, the Id. CIT (A) after analyzing the detailed facts and the order of the Assessing Officer as well as material on

record allowed the said expenditure as business expenditure.

9. Before us the Id. Sr. DR after referring to the various observations made by the Assessing Officer and referring to assessee's various contentions submitted that the assessee could not discharge the primary onus for claiming the expenditure. After relying upon various decisions, he stressed that the law on this point is absolutely clear that the onus is heavily upon the assessee to show that expenditure incurred is for the business purpose or not and if such an onus has not been discharged then expenditure claimed cannot be allowed. The observation and the finding of the Id. CIT(A) is not in any harmony with the discussions and observations, made by him, therefore/the order of the Assessing Officer should be Upheld.

10. On the other hand, the Id. counsel for the assessee submitted, that this issue stands squarely covers by the decision of the Tribunal in the group companies like in the case of M/s Westland Developers Pvt. Ltd. in ITA No. 1752/Del/2013, wherein on same issue matter was decided in favour of the assessee. Not only that this decision has been followed by the Tribunal in three other group cases of assessee viz.,

i. M/s. Glitz Builders and Promoters Pvt. Ltd., 1747/Del/2013 & 1406/Del/2013 dated 02.01.2015 for the A.Y. 2006-07;
ii. M/s. ISG Estate Pvt. Ltd. 1532/Del/2013 and 1756/Del/2013 dated 3.1.2015 for the A.Y. 2006-07;
iii. M/s. Business Park Promoters Pvt. Ltd., in ITA No. 1404/Del/2013 & 1732/Del/2013 for the A.Y. 2006-07.

He submitted that in all, these eases the Tribunal has held that since the assessee has neither claimed any income from purchase and sale of land nor has debited any expenditure on such purchases, therefore, there is no question of any disallowance. The assessee's income is only on account of

commission which is fixed @ Rs. 35,000/- per acre. The income from operation itself was Rs.8.08 lacs and cost on such operations was only Rs. 6.74. lacs. Thus, there is no question of disallowing any expenditure which has not been claimed.

11. We have heard the rival submissions and findings given in. the impugned orders as referred to before us. The first and foremost apparent from the perusal of the profit and loss account is that, assessee has not claimed any such expenses for Rs.1,05,86,958/-, nor it has been claimed in the computation of income. The assessee company purchases the land from the farmers and land owners and transfers the same to CWPPL and for such operations, the assessee company is only entitled for remuneration of Rs.35,000/- per acre over and above the land cost. The entire payment for the purchase of sale is not routed through profit and loss account albeit, directly debited/credited to the CWPPL account. This is evident from the copy of the ledger account of CWPPL and copy of profit and loss account filed before us rejected this contention of the assessee mainly on the ground that registration is done in the name of the assessee and the ownership of the land also lies with the assessee. However, in the order he himself has noted from the 'agreement' that, in lieu of transferring of development right to CWPPL, the assessee company only gets commission or charges of Rs.35,000/- per acre and the entire cost of land is reimbursed by the CWPPL. Once no such expenditure has been claimed at all or debited to the profit & loss account, ostensibly there is no question of any disallowance to be made in the hands of the assessee. In the Westland Developers Pvt. Ltd. (supra), the Tribunal has dealt exactly with the similar issue in the following manner:

"We have heard the rival submissions and perused the material available on record. The case law relied upon by the parties has been taken into consideration. On a consideration of the same we are of the view that since in the facts of the present case the material issue is that the said expenditure was

never claimed as assessee's business expenditure the occasion to make a disallowance of the same does not arise. On this fact there is no dispute as admittedly, the expenditure was never claimed as an expense by the assessee and consequently has not been routed through its P&L A/c. In the circumstances, the occasion to make an addition of the same by way of a disallowance in these peculiar facts and circumstances of the case does not arise. The reasoning and finding given while considering the arguments qua Ground No- 4 would fully, apply here also. The difference that here the entire amount is added u/s 37 as opposed to part of the expenditure disallowed u/s 40A(3) is not so material as the finding is arrived at taking cognizance of the material fact that hereto also no such claim of expenditure has been made. The fact that the additional payments were warranted in order to avoid potential disputes amongst the claimants off the land holding which have been passed through to die land holders from generation to generation wherein there may be informal arrangements of ownership and or the payments were for commercial expediency to facilitate peaceful possession and registration of the land holding; where by the time Registry was made the landholders felt a higher payment was necessitated due to increase in value are issues which are not required to be addressed in the present proceedings. Ground No.-3 on the facts available on record, considering the judicial precedent referred to in detail while deciding Ground No.-4 has to be decided in favour of the assessee."

12. The aforesaid decision has been followed in other cases of the group companies also. Thus, on the aforesaid reasoning and binding judicial precedents, we also hold that, there is no disallowance of expenditure in the hands of the assessee. Accordingly, the ground no. 2 of the revenue is dismissed."

7. Further, it was also adjudicated in the appeal of the assessee for the assessment year 2007-08 in the case of Green Valley Tower Pvt. Ltd. in ITA No. 1750/Del/2013 vide order dated 15.01.2021. For the sake of ready reference, the relevant part of the said order is reproduced as under:

> *"9.0 Coming to assessee's appeal for AY 2007-08, it is seen that in the assessment order, lots of seized documents are mentioned while making the addition in respect of interest paid on post dated cheques. However, nowhere has the AO stated that these seized documents belonged to the assessee. The Ld. CIT (A) has analysed all these seized documents and has given a categorical finding that none of the seized documents mentioned in assessment order belong to the assessee. It is clear from this that the AO has used documents which belonged to other assessees for making the addition in the hands of assessee. Further, the AO has neither called any of the vendors of land nor recorded any statement to arrive at the correct facts. Under such circumstances, question arises as to whether additions can be made in absence of any document/s or any adverse statement/s simply on the basis of suspicion and assumption that the assessee might have also paid interest on post dated cheques given towards purchase of land. This issue is settled by the co-ordinate bench in case of Westland Developers Pvt. Ltd. in ITA no. 1757/Del/2013 vide order dated 23.11.2015 wherein it was held by the Tribunal that in absence of any cogent, definite material which belonged to the assessee or any evidence demonstrating the payment of interest by the assessee on PDCs, reasons recorded for initiation of proceedings u/s 147 were not in consonance with law having been based on mere suppositions, surmises and extrapolation of material seized. The bench completely discarded the argument of AO and Ld. CIT (A) of common management and the assessee belonging to the same group and held that it cannot be equated with existence of incriminating seized material belonging to the assessee. In this case also,*

there is no seized document found which belongs to the assessee and it is so confirmed by the Ld. CIT (A) also in his order. No statement of any vendors of land is recorded by the AO. Statement of Shri Chottu Ram is referred to although the assessee has denied to have purchased any land from Shri Chottu Ram. The statement of Shri Chottu Ram was not even provided to the assessee. In our view, the statement of Shri Chottu Ram cannot be made as the basis for taking adverse inference without the assessee even having been confronted with it. Reliance is placed on the judgment of the Hon'ble Supreme Court in M/s Andaman Timber Industries vs. Commissioner of Central Excise wherein it was held that order becomes null if based merely on statement of witness without allowing opportunity to cross examine them. None of the vendors of land and the alleged recipients of interest paid by the assessee were examined by AO who would have confirmed of having received any such interest. It is the basic principle of law that unless there is a corroborative evidence, no addition can be made in an assessment. Reliance is placed on the judgment of the Hon'ble Supreme Court in case of Dhakeshwari Cotton Mills Ltd. vs. CIT 26 ITR 775(SC), Omar Salay Mohd. Salay vs. CIT 37 ITR 151 (SC) and Lalchand Bhagat Ambica Ram vs. CIT 37 ITR 288 (SC) wherein it is held by the Hon'ble Supreme Court that there must be something more than mere suspicion in support of an assessment and mere suspicion cannot take the place for the purpose of passing an order of assessment.

9.0.1 The issue of the alleged payment of interest by the assessee is covered by the judgment of the Hon'ble Jurisdictional (Delhi) High Court in case of CIT vs. Lubtec India Ltd. reported in 311 ITR 175 (Delhi) (2009) wherein it was held by the Hon'ble Delhi High Court that where there was nothing to show that expenditure in question was in fact incurred by assessee and assesese had denied having incurred expenditure and had contended that it did not have that kind of money, no addition on account of such expenditure could be made to assessee's income. The issue of alleged payment of interest by

the assessee is also covered by the decision of Hon'ble Delhi High Court in the case of CIT vs. Ved Prakash Choudhary reported in 169 taxman 130 (Delhi) (2008) wherein the addition was deleted as there was no corroborative evidence to show that there was in fact transfer of money. Accordingly, considering the facts of the case and judicial pronouncements as discussed above, the Ground nos. 2 & 3 relating to addition confirmed by the Ld. CIT (A) in respect of interest paid on post-dated cheques outside the books is deleted.

9.1 Ground of Appeal no. 5 is related to disallowance u/s 40A(3) of Income Tax Act, 1961 of Rs.12,31,160/- in respect of cash payment made by the assessee for purchase of land. The Ld. AR has submitted that the assessee has not claimed the amount paid for purchase of land as amount paid is neither debited to the Profit & Loss a/c nor claimed as deduction in the Computation of Taxable income as the assessee has received reimbursement of amount from M/s Countrywide Promoters Pvt. Ltd. He has further stated that the issue is covered by the decision of the co-ordinate bench of the ITAT 'H' bench, New Delhi in case of M/s West Land Developers Pvt. Ltd. in ITA no. 1752/Del/2013 vide order dated 22.08.2014. He has further stated that no appeal was filed by the department against this order before the Hon'ble Delhi High Court. It has further been stated that this issue is decided in favour of various assesses by the co-ordinate benches of the Tribunal in 31 other appeals of group companies of BPTP. On the other hand, the Ld. Sr. DR has placed reliance on the concurrent findings of the lower authorities. It is seen that the issue of disallowance u/s 40A (3) is decided by several co-ordinate benches in various cases of group companies of BPTP in favour of the respective assessees by taking the view that issue of disallowance of expenses does not arise as the amount paid for purchase of land is neither debited to the Profit & loss a/c nor claimed as expenditure in the Computation of taxable income as the assesses have got reimbursements of the amounts paid for

purchase of land from M/s Countrywide Promoters Pvt. Ltd. on assignment of development rights in land purchased by assesses in favour of M/s Countrywide Promoters Pvt. Ltd. This issue was first decided in the case of M/s West Land Developers Pvt. Ltd. in ITA no. 1752/Del/2013 vide order dated 22.08.2014 and later on in more than 30 other cases of BPTP group on identical facts. Therefore, respectfully following the decision/s of the co-ordinate benches on the issue of disallowance u/s 40A (3) and following the rules of precedence and consistency, the disallowance made by the AO of Rs.12,31,160/- is hereby deleted."

Disallowance u/s 40A(3):

8. The assessee company has acquired various lands through farmers/ villagers and after acquiring the same from farmers/ villagers, it has, in pursuance of a Collaboration Agreement handed over the same to M/s BPTP Ltd. for development/ construction of an integrated township project at the said land. As per the terms of that collaboration agreement, the assessee company is entitled for an additional consolidated fee of Rs. 40,000/- per Acre over and above the cost of land acquired and handed over to M/s BPTP Ltd. It is pertinent here to mention that in the said collaboration agreement between the Assessee Company and M/s BPTP Ltd., the assessee company has been referred to as 'Owner' of the Land and M/s BPTP Ltd. has been referred to as 'Developer'.

9. On perusal of the details of payments made by the assessee company for acquiring the land from farmers/ villagers, it has been noticed that the assessee has made part payment of total sale consideration in cash exceeding of Rs.20,000/- and thus has contravened the provisions of section

40A (3). Accordingly, the assessee vide order sheet entry dated 1-12-2008, has been asked to explain as to why not the provisions of section 40A (3) may not be applied to the expenditure incurred by it in cash for acquiring land from the farmers/ villagers and the same may not be disallowed to the extent of 20% as provided in the supra section.

10. The Assessing Officer has so caused the assessee for invoking disallowance u/s 40A (3) of I.T. Act and after considering the reply of assessee, the A.O. has made addition A.Y. 2006-07 of Rs. 32,28,037/- & A.Y. 2007-08 of Rs. 1,70,875/- respectively. The main contention of assessee before A.O. was that there is claim of expenditure in assessee's Books bf a/c's as assessee is getting reimbursement of this expense from collaborator i.e. M/s BPTP Ltd. Therefore, Section 40A (3) is not applicable.

11. The main reason for not accepting assessee's claim by A.O. is summarized as under:

"(i) The appellant is in the business of real estate development as per its auditors report.

(ii) Land purchased by appellant company is stock in trade in its hand.

(iii) The appellant receives Rs. 40,000 per acre of Land, therefore the appellant company is in business of real estate & therefore cost of Land is indirect Expense in its hand.

(iv) The A.O. has placed reliance on the applicability of See 40A(3) on the decision of Supreme Court in the case of Attar Singh Gurumukh Singh Vs. ITO 191 ITR 667.

(v) He held that Rule 6DD is not applicable as that rule only gives non application of Section 40A(3) in fulfillment of Specific condition."

12. The ld. CIT(A) supported the order of the Assessing Officer.

13. During the appellate proceedings, ld. AR made written submission dated 9.11.2011. The ld. AR emphasized that the assessee company has got reimbursed the land cost from the collaborator. He has submitted that the main contention before the AO for non applicability of Sec 40A(3) as under:

"Based on the aforesaid Agreement the assessee purchased land for which the (M/s BPTP Ltd.) has reimbursed all costs and expenses with respect to the acquisition of the said land and also in conformity with the Collaboration Agreement the assessee has received fees calculated @ Rs. 40,000/- per acre, which is duly credited to the Profit and Loss Account as the income.

Section 40A applies to expenses or payments not deductible in certain circumstances. It starts with the non-obstante clause providing that the provisions of the section shall have effect notwithstanding anything to the contrary contained in any other provisions of the Act relating to the computation of income under the head 'Profit and gains of business or profession.' Sub-

section (3) of Section 40A is an exception to the deductibility of expenditure under the computation provisions of 'Profits and gains of business or profession.' Thus axiomatically what does not fall within the computation of income will not attract the provisions of section 40A (3)."

14. The assessee further submitted that the sum paid by it for purchase of land does not fall within the term 'expenditure' as it is used in section 40A(3). The assessee has also contended that the land has not been purchased by it as stock-in-trade and it has not claimed the cost of land as any expenditure while determining its income under the head 'profit and gains of business or profession' and hence the provisions of section 40A(3) cannot be applied to make any disallowance.

15. The ld. AR reiterated the above stand taken before A.O Ld. AR has submitted that it was wrong to infer that any income was earned from purchase and sale of land. This fact does not emerge either from operation of collaboration agreement or from books of A/cs. The assessee receives only income @ Rs.40,000 per acres as consolidated fees for which license was actually acquired by M/s BPTP Ltd. Therefore, the Ld AR has argued that the assessee only receives the cost of land as reimbursement and relied on the following judicial pronouncements that as no expenditure is incurred, Section 40A(3) is not applicable.

i) CIT Vs Motilal Khatri (2008) 218 ITR 602 (Raj)
ii) CIT, Faridabad Vs Alpha Toyo Ltd. (2008) 174 Taxman 427 (Puri and Haryana)
iii) CIT Vs Banwari Lai Bansidhar 229 ITR 229 (All)

16. Further, ld. AR has relied upon the judicial pronouncement by Hon'ble Supreme Court that reimbursement under no circumstances can be regarded as revenue receipt. Case relied upon is cited as CIT Vs Tejaji Farasram Kharawalla Ltd. (1968) 67 ITR 95 (SC). This judgment has been followed by jurisdictional High Court in CIT Vs Industrial Engineering Projects (P) Ltd. 202 ITR 1014 (Del).

17. Heard the arguments of both the parties and perused the material available on record.

18. We have gone through the agreement between the assessee and the BPTP and find that the payments have been duly recorded and the amounts have been reimbursed by the BPTP and also the fact that these payments have not been debited to P&L account. The similar issue has been adjudicated in assessee's own case for the assessment year 2006-07 in ITA No. 6303 & 6342/Del/2013 dated 11.09.2017 **in para 10.4 & 10.5 of the order wherein the plea of the assessee has been allowed. For the sake of ready reference, the relevant portion of the said order is reproduced as under:**

> *"10.4 We have considered submissions made by the parties and perused the material made available on record. In Westland Developers Pvt. Ltd. (supra) on identical facts it was held as under:*
>
> > *"10.10. We have also taken ourselves through the judgment of the Jurisdictional High Court in the case of CIT vs Industrial Engineering Projects Pvt. Ltd. (cited supra) which has been relied upon before us for the proposition that reimbursement of expenses cannot be treated to be a Revenue receipt. How the judgment of the Apex Court in*

Tuticorin Alkali Chemicals & Fertilizers is applicable to the facts of the present case has not been set out in the order of the authorities nor has the Ld. DR been able to address the applicability of the said judgment to the issue at hand. We have taken ourselves through the said judgment and seen that it proceeds on entirety different facts and circumstances and has no applicability to the facts of the present case. Consequently, it is seen that from the ratio of the judgments relied upon before the CIT(A) and also before us which have been discussed in the earlier part of this order no arguments have been advanced by the Revenue so as to contend how they are not applicable to the case at hand, no distinguishing fact, circumstance or position of law has been relied upon so as to come to a contrary finding than the one arrived at. Accordingly on a consideration of the peculiar facts and circumstances of the case and the judgments relied upon considering the relevant provision of the Act namely Section 40A(3), we hold for the detailed reasons given hereinabove that Section 40A(3) of the Act has been wrongly invoked as admittedly no expenses relatable to the addition has been claimed and the assessee has successfully demonstrated that the payment were reimbursement made by CWPPL. Accordingly Ground No.4 is allowed. "

10.5 As facts of case of assessee are similar and identical to the various cases decided by coordinate benches of Tribunal, New Delhi details of which are given above where similar disallowance by following the order in case of M/s Westland Developers Pvt. Ltd. (supra) as aforesaid is deleted by various coordinate benches of the Tribunal, New Delhi, the ground No. 5 is allowed and disallowance of cash payment made under section 40A(3) is deleted as assessee has not claimed any deduction in respect of cash payment made."

19. In the absence of any material change in the facts of the case and since the amounts are in the nature of reimbursement,

not debited to P&L account of the assessee, no disallowance u/s 40A(3) is called for.

Addition of account of seized material:

20. Page 16 of the Annexure A-25/Party BO-III is a copy of cheque no. 355542 dated 07.03.2007 for Rs.25,00,000/- drawn on PNB, Mewla Maharajpur, Faridabad. On the bottom of the said page, it is written 'Received – Loan A/c – From Baljeet'. The assessee claimed that the said cheque was received by it from one Mr. Ranjeet Singh as deposit for purchase of suitable property but the transaction could not be materialized and the amount was returned to the party on 11.06.2007. The assessee also furnished a copy of the ledger account of Mr. Ranjeet Singh in its books before the AO. The Assessing Officer made addition holding that the bank statement of Mr. Ranjeet Singh as well as assessee's own bank statements evidencing the debit and credit of the said amount was not furnished.

21. Before us, it was argued that the name, address, PAN number, bank statement, details of debit, credit and details regarding the refund of the amounts have been duly submitted before the revenue authorities. The amount has been received on 07.03.2007, repaid on 11.06.2007 even before the date of search i.e. 15.11.2007, it can be considered as a business loan received and the same has been duly refunded. We have also perused the record before us and find that there is no material to prove that the amount received is liable for tax u/s 68 and the addition made by the AO is directed to be deleted.

22. Page 28 of Annexure A-3 of Annexure A-9/Party BO-III

The addition of Rs.1,52,25,000/- has been made on account of PDC of Rs.1,40,00,000/- and notional interest of Rs.12,25,000/- Since, the issue of PDC has already been dealt on merits of the case, we hereby hold that no notional interest on such amount can be upheld. The interest calculated on the PDC by the AO is without any basis or evidence. Hence, we direct the addition made by the AO be deleted.

23. In the result, appeal of the revenue is dismissed and the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 04/05/2021.

Sd/-

(K. N. Chary)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

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Dated: 04/05/2021

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR