

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**I.T.A No.1743/Del/2013
(ASSESSMENT YEAR 2006-07)**

Green Park Estate Pvt. Ltd. M-11, Middle Circle, Connaught Circus, New Delhi-110 001 PAN-AAACG 4040P (Appellant)	Vs.	Asst.CIT, Central Circle-23, New Delhi-110 001 (Respondent)
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Appellant By	Sh. Ajay Bhagwani, CA
Respondent by	Ms. Anima, Sr. DR
Date of Hearing	15.06.2021
Date of Pronouncement	13.09.2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 18.12.2012 passed by the Learned Commissioner of Income Tax (Appeals)-XXXIII, New Delhi {CIT(A)} and pertains to Assessment Year 2006-07.

2.0 The brief facts of the case are that the assessee is one of the group company of BPTP Ltd. and is engaged in the business relating to Real Estate. The return of income was filed declaring total income of Rs. 4,70,940/-. On the basis of certain documents seized during the course of search and seizure action on the BPTP group and its group companies on 15.11.2007, the assessment proceedings u/s 153A/153C of the Income Tax Act, 1961 (hereinafter called 'the Act') were initiated. Subsequently, the Assessing Officer recorded reasons for reopening of assessment and issued noticed u/s 148 of the Act. The assessment u/s 147 of the Act was made after making the following additions and disallowances:

- i) On account of interest on Post Dated Cheques (PDCs) of Rs.26,08,186/-
- ii) On account of disallowance u/s 37(1) of the Act on additional payment of Rs.41,50,000/- towards purchase of land.
- iii) Addition on account of deemed dividend u/s 2(22)(e) of Rs.4,54,171/-.

2.1 Aggrieved, the assessee preferred an appeal before the Ld. First Appellate Authority, who was pleased to partly delete the addition on account of interest on post dated cheques amounting to Rs.24,12,406/-. The Ld. CIT(A) also partly deleted the disallowance made u/s 37(1) of the Act on additional payment of Rs.40,50,000/-. The assessee also got relief with respect to addition on account of deemed dividend u/s 2(22)(e) of the Act amounting to Rs.4,54,171/-. However, the Ld. CIT(A) upheld the initiation of re-assessment proceedings. Thus, in effect the Ld. CIT(A) confirmed the addition on account of post dated cheques amounting to Rs.1,95,780/- and also the disallowance u/s 37(1) of the Act on additional payment of Rs.1,00,000/-.

2.2 Aggrieved, the assessee is now before this Tribunal challenging the upholding of the aforesaid additions by the Ld. CIT(A) by raising the following grounds of appeal:

“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)/147 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 assumption of jurisdiction u/s 147 by the Assessing Officer and in making the assessment in pursuance thereof, without dealing with appellant's objections on merits.

2.1 That the CIT(A) having given a finding that no seized material obtained from the search of BPTP Group of cases (no search having been made on the appellant) belonged to the appellant, clearly erred in yet upholding the action u/s 147 taken in the hands of the appellant based on such seized material.

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 proves 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.

4.3 That without prejudice the CIT(A) did not deal with the following specific ground No.4.1:-

"4.1. That learned Assessing Officer has erred in making an addition of Rs.41,50,000/- on account of additional payments as recorded in books of account of appellant company as against amount of Rs.40,00,000/- paid on account of additional payment and recorded in books of account"

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.*

6. *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.”*

3.0 We also note that the Cross Appeal filed by the Department against the relief allowed by the Ld. CIT(A) was dismissed by this Tribunal due to low tax effect in ITA No.1531/Del/2013 vide order dated 14.10.2019 and, therefore, for the captioned assessment year only the present appeal is surviving.

4.0 At the outset, the Ld. Authorized Representative (AR) submitted that ground No.1 of the appeal was not being pressed. Accordingly, this ground is dismissed as not being pressed.

4.1 Arguing for ground No.2 against assumption of jurisdiction u/s 147 of the Act, the Ld. AR drew our attention to copy of the reasons recorded u/s 147 of the Act and placed in the Paper Book. The reasons recorded, for the sake of convenience, are being reproduced herein under:

Reason recorded, copy placed at page no.50 of Paper Book, in Para 1 and 2 are reproduced for sake of convenience as under:

“Return declaring an income of Rs.4,79,940/- was filed on 20.11.2006. The case was processed u/s 143(1).

1. A search and seizure action was conducted on BPTP and its Group companies on 15.11.2007. Certain documents seized in the search action (Details enclosed as per Annexure-A) on the Group and the post-search enquiries made revealed that the group was following a business model as a part of which only part payments of the sale consideration in respect of the land purchased were paid at the time of execution of the sale-deed and the payment of balance sale consideration was invariably made through post datedcheques (PDCs) and 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% p.m. on the amount of PDCs. During the course of post search enquiries, it was also noticed that the said payment of interest by the vendee company in cash has not been accounted for by it in its books of account. The assessee company has also purchased a large chunk of land and followed the same modus operandi of making payment through PDCs and has made payment of interest of Rs. 25,24,110/- in cash out of books of account. The income of the assessee to the tune of Rs.25,24,110/- on account of interest paid in cash out of the books of account has, thus, escaped assessment.”

2. During the course of search on BPTP and its Group companies a document was found and seized (Pages 1 to 11 of Annexure-A-1 of Party BO-I) from the premises 5th& 6th Floor,

DCM Building, Barakhamba Road, New Delhi which revealed that the assessee company had made additional payments 'aggregating to Rs1,50,000A against the purchase of land to various land owner's. 'The post-search Investigations / enquiries were also made to verify the genuineness of the additional payments actually having been made and summons u/s 131 were issued to several farmers from whom the land was acquired. The enquiries made revealed that the additional payments made 'were not genuine. Moreover, the additional payments were made in violation of the section 24 of the Stamp Duty Act and as such the same are not admissible as expenditure as per explanation to u/s 37 (I) of the I.T. Act. The income has, thus, been under assessed to the extent of Rs. 1,50,000/- on account of additional payments against the purchase of land.

I have, therefore reasons to believe that income chargeable to tax amounting to Rs.26,74,110/- (Rs.25,24,110+Rs.1,50,000) has escaped assessment within meaning of section 147 Notice u/s 148 is issued.”

4.2 The Ld. AR submitted that the issue of reopening of the assessment proceedings was fully covered in favour of the assessee by the order of this Tribunal in the case of one of the group companies M/s Green Valley Tower Pvt. Ltd. in ITA No.1735/Del/2013, wherein vide order dated 15.01.2021, the reassessment proceedings were held to be bad wherein identical reasons had been recorded by the same Assessing Officer (AO) on

the same date in the case of M/s Green Valley Tower Pvt. Ltd.. The Ld. AR drew our attention to copy of reasons recorded in the case of M/s Green Valley Tower Pvt. Ltd. which was placed in the Paper Book. The Ld. AR also placed on record a copy of the order of this Tribunal in the case of M/s Green Valley Tower Pvt. Ltd. vs. ACIT, New Delhi for Assessment Year 2006-07 in ITA No.1735/Del/2014 as aforesaid.

4.3 The Ld. AR submitted that not only identical reasons were recorded by the same Assessing Officer in the case of assessee as well as in the case of M/s Green Valley Tower Pvt. Ltd. for the Assessment Year 2006-07 and on the same date on 29.03.2010, but also the documents on the basis of which action u/s 147 of the Act was initiated was the same in both the cases.

4.4 The Ld. AR also submitted that an identical issue had come up before this Tribunal in the case of another group company M/s Westland Developers Pvt. Ltd. in ITA No. 1757/Del/2013 for Assessment Year 2006-07 and the issue of reopening of the assessee had been decided in favour of the

assessee by the Tribunal vide order dated 22.11.2015. A copy of the said order was also placed on record.

4.5 The Ld. AR submitted that it was evident that the reasons recorded in the case of the assessee had no specific nexus with the assessee and, therefore, there was no valid reason for formation of belief that income had escaped assessment in the hands of the assessee and, therefore, the action taken u/s 147 of the Act was void ab-initio and was not sustainable.

4.6 The Ld. AR also submitted a synopsis on the merits of the case and submitted that these may be considered as the arguments of the assessee in case the initiation of reassessment proceedings u/s 147 of the Act were held to be justified. The copy of the synopsis has been taken on record.

5.0 Per contra, the Ld. Sr. DR vehemently argued that lots of the seized documents belonging to group companies were found during the course of search which indicated payment of interest in cash outside the books of accounts in respect of purchase of land as well indicated additional payment made in cash for the

purchase of land and, therefore, the Assessing Officer was absolutely correct in initiating reassessment proceedings u/s 147/148 of the Act. The Ld. Sr. DR supported the orders of the Lower Authorities on the legal issue of validity of reassessment proceedings as well as on the merits of the case.

6.0 We have heard the rival submissions and have also gone through the records. We have also perused the reasons recorded in the case of Green Valley Tower Pvt. Ltd. for Assessment Year 2006-07 which are being reproduced herein under for a ready reference:

Reasons for reopening the case u/s 147 read with section 148

“Return declaring an income of Rs.4,03,150/- was filed on 15.11.2006. The case was processed u/s 143(1).

A search and seizure action was conducted on BPTP and its Group companies on 15.11.2007. Certain documents seized in the search action (Details enclosed as per Annexure-A) on the Group and the post-search enquiries made revealed that the group was following a business model as a part of which only part payments of the sale consideration in respect of the land purchased were paid at the time of execution of the sale-deed and the payment of balance sale consideration was invariably made through post dated cheques (PDCs) and 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% p.m. on the amount of PDCs. During the course of post search enquiries, it was also noticed that the said payment of interest by the vendee company in cash has not been accounted for by it in its books of account. The assessee company has also purchased a large chunk of land and followed the same modus operandi of making payment through PDCs and has made payment of interest of Rs. 24,78,080/- in cash out of books of account. The income of the assessee to the tune of Rs.24,78,080/- on account of interest paid in cash out of the books of account has, thus, escaped assessment.

2. During the course of search on BPTP and its Group companies a document was found and seized (Pages 1 to 11 of Annexure-A-1 of Party BO-I) from the premises 5th & 6th Floor, DCM Building, Barakhamba Road, New Delhi which revealed that the assessee company had made additional payments 'aggregating to Rs.9,52,625/- against the purchase of land to various land owner's. The postsearch Investigations / enquiries were also made to verify the genuineness of the additional payments actually having been made and summons u/s 131 were issued to several farmers from whom the land was acquired. The enquiries made revealed that the additional payments made were not genuine. Moreover, the additional payments were made in violation of the section 24 of the Stamp Duty Act and as such the same are not admissible as expenditure as per explanation to u/s 37 (I) of the I.T. Act. The income has, thus, been under assessed to the extent of Re.9,52,625/- on account of additional payments against the purchase of land.

I have, therefore reasons to believe that income chargeable to tax amounting to Rs.34,30,705/- (Rs.24,78,080+Rs.9,52,625) has escaped assessment within meaning of section 147.

Notice u/s 148 is issued.”

6.1 A perusal of the reasons recorded in the case of the assessee as well as in the case of M/s Green Valley Tower Ltd. are identical on the issue of alleged interest paid on post dated cheques. We have also gone through the paper book containing the copies of seized documents and the summary of these seized documents. It is the assessee contention that there was no seized documents which were referred to in the assessment order which could be said to be belonging to the assessee. The Ld. Sr. DR has also failed to bring to anything on record to establish that any seized documents were found during the course of search belonging to the assessee. There is a clear finding recorded by the Ld. CIT(A) in the impugned order in Para. 4.3 & 4.4 of his order that none of the seized documents belonged to the assessee. The Ld. Sr. DR was unable to controvert this categorical finding recorded by the Ld. CIT(A). Thus, undisputedly, in the present case, no documents belonging to the assessee were found during

the course of search. We also note that this issue has been dealt with in detail in the case of M/s Green Valley Tower Pvt. Ltd. in ITA No.1735/Del/2013 for Assessment Year 2006-07 vide order dated 15.01.2021. The relevant findings of the Co-ordinate Bench of the Tribunal are contained in paragraphs 7.3, 7.4 and 8 of the said order and the same is being reproduced herein under for a ready reference:

“7.3 In our considered view, each and every assessee is a separate and distinct assessee. It is a fact on record that no seized material belonging to the assessee was found during the course of search on BPTP Ltd. and some of its group companies. None of the vendors of land who sold land to assessee were called and examined by the AO. There is nothing adverse brought on record by the AO in form of any material or any statement that interest outside the books was paid in cash by the assessee. The reasons were recorded by the AO by relying on seized documents which belonged to some other assessee during the course of search on BPTP Ltd. and some of its companies. Considering the rules of precedence and consistency and in absence of any material, document, evidence or statement which could implicate the assessee, in our view, the impugned assessment could not have been reopened. In view of these specific facts, the action

taken by the AO of reopening of the assessment u/s 147 of assesse is not sustainable and the same is quashed as being void ab-initio as being based on seized documents of other assessee and based on presumptions, assumptions and incorrect interpretation of law.

7.4 As we have held the re-assessment as being void ab-initio, the grounds raised by the assessee on the merits of the additions become academic in nature and are not being adjudicated upon.

8.0 In the result, ITA 1735/Del/2013 filed by the assessee is allowed."

6.2 We also note that similar issue was also considered by the Co-ordinate Bench of this Tribunal in the case of M/s Westland Developers Pvt. Ltd. vide order dated 22.11.2015 in ITA No.1757/Del/2013 for Assessment Year 2006-07 wherein at para-7 of the said order the following was held:

"7. Now adverting to the second limb of assessee's stand, i.e., whether the reasons recorded for forming the belief of escapement of income on the basis of material seized are justified or vague to take recourse of section 147. In this context, on perusal of the orders of authorities below, we find that the assessee has categorically denied that any of

the seized documents, discussed in the impugned order, belonged to the assessee. We also find that the assessment order also nowhere records any finding that any of the documents seized belong to the assessee. Even the Id. CIT(A) at para 4.3 has categorically stated that the assessment order nowhere mentions that any part of the seized material belong to the appellant company. The assessee has been denying to have paid any interest on PDCs. No cogent material was found during the course of search which could repel this contention of assessee. The reasons have been recorded by the AO after drawing the inference from the seized documents that trend of payment of interest on PDCs by the group companies stood depicted and the assessee being a group company of BPTP Ltd., might have also paid interest on such PDCs. This approach of the authorities below, to our mind, is not tenable at all being based on fake inferences drawn. The assessee is a separate and distinct assessee under the Act and is to be assessed on the basis of material which belongs to it or specifically relevant for its assessment. In the instant case no specific document is pointed out belonging to the assessee nor any evidence or material, whatsoever, has been demonstrated by the authorities below to show that the assessee had paid interest on PDCs. Therefore, there being no definite material belonging to the assessee, in our

opinion, the reasons recorded for initiation of proceedings u/s. 147 against the assessee, are not in consonance with law, having been based on mere suppositions and surmises and extrapolation of material seized. The fact that the assessee is a group company of BPTP Ltd. and overall management is controlled by one person cannot be equated with the existence of incriminating material belonging to the assessee for drawing the adverse inference. We, therefore, find considerable force in the contention of the assessee that assessment is based on alien material having no specific nexus with the assessee and that there is no corroborating and independent evidence to justify that the assessee had paid interest of PDCs, as alleged by the authorities below. The action taken u/s. 147 by the AO is, therefore, void ab initio and not sustainable, having been resorted to on vague reasons.

8. *Once, as observed above, we have held the proceedings u/s. 147 as void, we need not to enter into the merits of additions challenged by assessee by way of other grounds and also by the Revenue in its appeal. Accordingly, the appeal of the assessee is liable to be allowed and that of Revenue to be dismissed.”*

6.3 In view of the orders of the Co-ordinate Bench of this Tribunal in the case of group companies on identical reasons

recorded and on identical facts and after duly considering the Rules of consistency and in absence of any material, documents, evidence or statement which could implicate the assessee, it is our considered view that the impugned assessment could not have been reopened. Therefore, on specific facts of the case and respectfully following the orders of the Co-ordinate Benches as aforesaid in the case of companies belonging to the same group and after duly giving credence of the fact that identical reasons were recorded, we hold that the action taken by the Assessing Officer for reopening of the assessment u/s 147 of the Act is not sustainable and the same is hereby quashed as being based on seized documents of other assessees and being entirely based on presumption and assumptions and incorrect interpretation of law. Accordingly, we set aside the re-assessment.

6.4 As we have held the reassessment as being void ab-initio, the grounds raised by the assessee on merits of the case are not being considered for adjudication as they have become academic in nature.

7.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 13th September, 2021.

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated:13/09/2021

PK/Ps

Copy forwarded to:

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

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI