IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'C' NEW DELHI

BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]

ITA No.290/Del/2018
Assessment Year: 2006-07

M/s. Green Park Estate Pvt. Ltd., M-11, Middle Circle, Connaught Circus, New Delhi	**Vs.**	ACIT, Central Circle-32, New Delhi
PAN :AAACG4040P		
(Appellant)		**(Respondent)**

Appellant by	Sh. Ajay Bhagwan, CA
Respondent by	Ms. Anima Barnwal, Sr.DR

Date of hearing	29.09.2021
Date of pronouncement	21.10.2021

ORDER

PER O.P. KANT, AM:

The present appeal by the assessee is directed against the order dated 21.11.2017 whereby the learned Commissioner of Income Tax (Appeals)-30, New Delhi [in short 'the learned CIT(A)'] has confirmed the penalty imposed u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') by the Assessing Officer.

2. At the outset, the learned counsel for the assessee submitted that in this case, the quantum addition, against which the penalty has been imposed under Section 271(1)(c) of the Act

by the Assessing Officer, has been deleted by the ITAT, Delhi Bench, in ITA No. 1743/Del/2013 for assessment year 2006-07. Thus, it is submitted that as the quantum appeal is allowed, the appeal in respect of penalty levied u/s 271(1)(c) does not survive and needs to be dismissed.

3. On the other hand, the learned DR did not controvert the above facts.

4. We have heard both the parties through Video Conferencing and perused the relevant material available on record. We find that the quantum appeal, against which the penalty was levied, was allowed by the ITAT, Delhi Bench, vide order dated 13.09.2021 in ITA No. 1743/Del/2013 for assessment year 2006-07 by quashing the assessment completed u/s 147/143(3) of the Act. The relevant para of the order of the Tribunal is reproduced as under:

> *"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 ofinterest 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, Barakharnba 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 post search Investigations / enquiries were also made to verify the genuineness of the additional payments actually having been made end 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 cheuqes. 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 the 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 abinitio, 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 para7 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 ld. 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 17 ITA No.1743/Del/2013 M/s Green Park Estate (P) Ltd. Vs. ACIT 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 abinitio, the grounds raised by the assessee on merits of the case are not being considered for adjudication as they have become academic in nature."

5. Hence, as the quantum addition has already been deleted, the appeal for penalty does not survive. Accordingly, the appeal is dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 21st October, 2021

Sd/-	***Sd/-***
(KULDIP SINGH)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 21st October, 2021.
RK/-(DTDC)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi