

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

**BEFORE SH. P.K. BANSAL, ACCOUNTANT MEMBER  
AND  
SH. C.M. GARG, JUDICIAL MEMBER**

ITA No. 925/Del/2014  
Assessment Year: 2007-08

Income Tax Officer, Ward - 12(3), New Delhi	<b>Vs.</b>	M/s. Hamlog Builders Pvt. Ltd., 63, Rama Marg, Najafgarh Road, New Delhi
<b>PAN : AAACH3041H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Amrit Lal, Sr.DR
Respondent by	Sh. V.K. Sabharwal, Adv.

Date of hearing	26.12.2016
Date of pronouncement	27.12.2016

**ORDER**

**PER P.K. BANSAL, A.M.:**

The only ground taken in this appeal filed by the Revenue against the order of learned Commissioner of Income Tax (Appeals)-XXXIII, New Delhi, dated 30.08.2013, read as under:

*“1. On the facts and circumstances of the case & in law, the learned Commissioner of Income Tax (Appeals) had erred in deleting the addition of Rs.1,97,08,375/- on account of additional payment made to farmers.”*

2. The brief facts of this case are that the Assessing Officer noted during the course of assessment proceedings that the assessee had purchased the agricultural land for an amount of Rs.19,32,23,625/-. From the details in respect of these purchases, it was noticed that the assessee company made additional payment of Rs.1,97,08,375/- over

and above the sale consideration mentioned in the sale deed by which the assessee has increased the value of the land. When asked for, the assessee explained that the additional payment has been made, stated as under:

*“(i) Additional amount paid for procurement of land, particularly, there is only for the purpose of acquiring assets in the company.*

*(ii) The company has not debited any of the expenses during the year in the profit and loss account or adjusted against the income chargeable to tax, therefore, the question of this allowance does not arise at all.*

*(iii) The additional payment was made by the Company in favour of the following:*

*(i) M/s Triveni Infra Development Co. Pvt. Ltd. Rs. 1,30,69,375/- vide cheque No. 441320 dated 21.04.2006 drawn on SBI Bank, Kirti Nagar, New Delhi, Rs. 6,38,800/- vide cheque No. 4421321 dated 21.04.2006 drawn on SBI Bank, Kirti Nagar, New Delhi, being the additional payment compensation for standing crops and old house. It is stated that Assessee Company had purchase the Land area 11.8813 acre from M/s Triveni Infra Development Co. Pvt. Ltd. for Rs. 13,06,93,75/- Sell Deed dated 20.04.06 but there after some disputed arises between party and assessee company due to increase in rate in market of land house and tubewell on the land. For smooth running of the business to get property free from any encumbrances, Assessee Company had paid additional Payment of Rs.1,37,08,175/- as compensation to land owners. This payment made wholly & exclusively for Business purpose and duly recorded in book of accounts.*

*(ii) Shri Prakash Rs.30,00,000/- vide cheque No. 441301 dt. 16.05.2006 drawn on SBI Bank, Kirti Nagar, New Delhi, and Rs. 30,00,000/- vide cheque No. 441306 dated 24.04.2006 being the additional payment for settlement due to increase in rate of land in the market, It is stated that initially assessee Company in the oct 2005, made a agreement to purchase of land form Mr Prakash S/o Badle 16 Kanal in consideration of Rs. 1,10,00,000/- and paid advance accordingly. A sale deed for the same land was executed on 13/04/2006, entire consideration*

*was paid and sale deed executed. Within the same week company has agreed to purchase 16 kanal from same Prakash and his brother Sant Ram in consideration of Rs. 2,20,00,000/- and paid accordingly.*

*When the seller came to know the fantastic increase in cost of land which as double in 4 days, he and his relative denied to hand over the possession of said land pertinent to the transaction under Rs. 1,10,00,000/- of sale deed dated 13.04.2006.*

*As there was raised in price value the company decided to pay the part of the price to the respective seller. As the price rise was calculated by the seller 1.10 crore to 2.20 crore then vide settlement the same of Rs. 60,00,000/- paid against lower amount. ”*

2.1 The Assessing Officer took the view, after noticing that the assessee had not debited any expense in the profit and loss account that the additional payment has been made after registration of the sale deed. These additional payments, therefore, if the violation of the provisions of Section 24 of the Indian Stamp Act, 1899, and instrument on which proper stamp duty has not been paid, is inadmissible evidence as per section 35 of the Stamp Act and, therefore, he took the view that the additional payment do not stand the test of legality as per the provisions of Explanation to Section 37 of the Income-tax Act, 1961 (for short ~~the~~ Act). The only contention of the assessee is that the above land has been shown under the head ~~Project~~ Project under Progress/Inventoryq He took the view that the inventory or stock would always be mandatorily taken into account while arriving at the profit of any venture. He did not accept the explanation of the assessee that the payments were made on account of standing crops, tubewell etc. as the value of the agricultural produce comes to few thousand of rupees, whereas the additional payment has been made in lakhs and the companies to whom the

payments have been made, has not been shown in the income from sale of standing crops/plants or trees or any other sort.

2.2 The assessee went in appeal before the learned Commissioner of Income Tax (Appeals). The learned Commissioner of Income Tax (Appeals) deleted the addition by holding as under:

*“I have considered the assessment order, written submissions of the Ld. AR and additional evidence filed during the appellate proceeding and the report of the Ld. Assessing Officer on such additional evidence.*

*It is admitted fact that the entire additional payments has been made subsequent to registration of sale deed to the sellers of the land. The Ld. Assessing Officer has not doubted the payment of such additional payment. The reason for additional payment explained by the appellant and the Ld. AR is on account of crops tube well etc. on the land to the extent of Rs. 6,38,000/- & rest of the payment was paid on account of dispute created by the seller of the land at the time of taking possession as there was steep rise in land price, These payment for increase in cost is backed up by written agreement.*

*In fact, main ground for the addition on account of such disallowance of additional payment by the Assessing Officer is that the payment has been made in violation of Indian Stamp Act, namely. Section 24 and 35 of Indian Stamp Act. The Assessing Officer has held that these payments are in violation of Indian Stamp Act and, therefore, the same is not allowable u/s 37 of the I.T. Act. The Ld. Assessing Officer has relied on explanation of section 37 which states that any expenditure incurred by assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction shall be made in respect of such expenditure.*

*I have examined section 24 and section 35 of Indian Stamp Act. Section 24 envisages scope of entire consideration with respect to transfer of immovable property. Section 35 envisages that the instrument which has registered cannot used as evidence unless such instrument is duly stamped. Neither the section either 24 nor 35 provides payment subsequent to registration illegal as such. As the additional payment is made subsequent to registration, they will*

*not come, within the purview, of the consideration u/s 24 of Indian Stamp Act till the date of registration. As far as section 35 is concerned, if such registered deed without proper stamp duty cannot be taken as evidence before the law. Therefore in nutshell if subsequent payment, i.e. additional payment is considered as consideration for the property then such registered deed will not be taken as evidence to claim ownership right or the property.*

*Even if the additional payments are linked to the consideration for the transfer of rights in the property, it is the duty of registrar, registering the document to raise additional stamp on such additional consideration. In present case, no additional stamp duty has been collected on additional payment subsequent to the registration. No penalty for such additional payment has been levied by registration authority administering the stamp Act. In such circumstances, I don't agree that these additional payments are prohibited by law and, therefore, such payment cannot be claimed as deduction u/s 37 of I.T. Act. The additional payment is made in business expediencies.*

*During the assessment proceeding, the appellant have given the complete details of additional payment, the purposes and the name and address of the payee. The Ld. Assessing Officer has not made any enquiry to rebut the claim of the appellant. The purpose of additional payment to various person is stated to be the payment for standing crops, tubewells etc. on the agricultural land and payment for as per compromised deed to strengthen the title of the land. The payments are through banking channel and which has not been doubted by the Ld. Assessing Officer.*

*The Ld. Assessing Officer has mentioned in the order there is notice u/s 133(6) of the I.T. Act were issued in five companies to enquire the trend of additional payment. It is mentioned in the order that those five companies have stated that no additional payment was made for the acquisition of land in such area. During appellate proceeding, Ld, AR has submitted the Balance Sheet and P & L A/c of those companies from the sites of Ministry of Corporate Affairs, Government of India for A.Y. 2007-08: There is investment of not more than 1.5 lacs. These information were forwarded to Ld. Assessing Officer for comment, the Assessing Officer vide letter dated 27-8-2013 has verified the record and stated that no reply from these five companies in response to alleged 133(6) are on record & Infact notice u/s 133(6) is not on record..*

*In any case, it is established that the appellant was not confronted during the assessment proceeding, regarding the verification u/s 133(6) and presently the assessment record does not contain any paper related to 133(6). Therefore, no cognizance can be taken on the basis of the findings of the Ld. Assessing Officer in the Assessment order regarding verification u/s 133(6) of the I.T. Act, against the assessee. Further, the Additional payment for the purchase of land is the matter of facts and depends "on circumstances of particular land purchase deal.*

*After considering entire facts and circumstances of the case, I hereby direct the assessing officer to delete the addition on account of additional payment. This ground of appeal is allowed."*

2.3 Aggrieved from the order of Commissioner of Income Tax (Appeals), the Revenue is before us.

3. We heard the rival submissions and carefully considered the same along with the orders of the tax authorities below. We note that this is a case where the assessee has not debited the expenditure, which has been incurred by the assessee by way of additional payment made for the purchase of the land. Neither the assessee has claimed these expenditures as deduction in the profit and loss account, nor the assessee claimed these expenditures to be made as compensation for standing crop, rise in the market rate of land, old house and tubewell on the land as per the Tripartite Agreement dated 21.07.2006. The payment has been made by the assessee through cheques as is clear from the brief facts stated hereinabove. The Assessing Officer made the addition in view of the explanation to section 27 of the Act. The provision of Explanation to Section 37 of the Act, read as under: %

*"For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purposes of business or profession and no deduction or allowance shall be made in respect of such expenditure."*

4. From the aforesaid Explanation, it is apparent that this Explanation debars the assessee to claim deduction in respect of any expenditure, which has been incurred by the assessee for any purposes which is an offence or which is prohibited by law. Compensating the land owner for standing crops, rise in market rate of land, old house and tubewell on the land, in our view, cannot be recorded that the expenditure has been incurred for the purpose, which is an offence or which is prohibited by law. Making payment in this manner is not an offence. Learned Departmental Representative, even relying on the order of the Assessing Officer, could not brought to our knowledge any prevailing law by which the assessee is prohibited to make such payment to the land owner or such payment are deemed to be an offence. Under these facts and circumstances, we are of the view that this is not a fit case, which warrant our interference. In our opinion, the learned Commissioner of Income Tax (Appeals) has rightly deleted the disallowance.

6. In the result, appeal filed by the Revenue stands dismissed. The decision is pronounced in the open court on 27<sup>th</sup> Dec., 2016.

Sd/-

**(C.M. GARG)**  
**JUDICIAL MEMBER**

Dated: 27<sup>th</sup> December, 2016.

RK/-

Copy forwarded to:

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

Sd/-

**(P.K. BANSAL)**  
**ACCOUNTANT MEMBER**

Asst. Registrar, ITAT, New Delhi