

**(2018) 02 CHH CK 0182**

**Chhattisgarh High Court**

**Case No:** TAXC No. 154 Of 2017

Deputy Commissioner Of  
Income Tax

APPELLANT

Vs

RCP Infratech Pvt. Ltd.

RESPONDENT

**Date of Decision:** Feb. 8, 2018

**Acts Referred:**

- Income Tax Act, 1961 - Section 40A(3)
- Income Tax Rules, 1962 - Section Rule 6DD

**Hon'ble Judges:** Prashant Kumar Mishra, J; Ram Prasanna Sharma, J

**Bench:** Division Bench

**Advocate:** Naushina Afrin Ali

**Final Decision:** Dismissed

### **Judgement**

Prashant Kumar Mishra J

1. Heard.

2. This appeal by revenue would assail the order passed by the Income Tax Appellate Tribunal (henceforth, the Tribunal) on 11.05.2017, dismissing

the appeal preferred by the revenue wherein challenge was made to the order passed by the CIT (Appeals), Raipur dated 30.04.2014, which allowed

the assessee's appeal against the order passed by the AO, imposing tax liability to the tune of Rs.3,41,84,000/- applying Section 40A(3) of the Income

Tax Act, 1961 (henceforth, the Act).

3. Section 40A(3) of the Act provides that any expenditure in respect of which a payment or aggregate of payments made to a person in a day,

otherwise than by an account payee cheque drawn on a bank or an account payee bank draft exceeds Rs.20,000/-, no deduction shall be allowed in respect of such expenditure.

4. In the case at hand, it is admitted that payment to the tune of Rs. 3,41,84,000/- was made by the assessee in cash to different persons towards payment of purchase price for lands as the assessee is engaged in the business of sale and purchase of lands. The Assessing Officer recorded his satisfaction that the explanation offered by the assessee as to why payments were made in cash, does not satisfy the requirement of Rule 6DD of the Income Tax Rules, 1962.

5. The CIT (Appeals) allowed the appeal preferred by the assessee accepting the arguments that the sellers have insisted for cash payment; the identity was established by furnishing photograph, addresses and witnesses and the deal was made in the presence of competent authority, which has cross checked the payments, therefore, the entire deal having been made in a legally permissible and transparent manner, there was no intention to evade tax.

6. While allowing the appeal the CIT (Appeals) also referred to the order passed by the Coordinate Bench of this Court in Tax Case No. 13 of 2016 decided on 01.03.2016, to hold that the Assessing Officer is not correct in invoking the provisions of Section 40A(3) of the Act with respect to the subject transactions. The CIT Appeal thus deleted the additions made by the AO. The Tribunal has affirmed the order passed by the CIT(Appeals).

7. We have heard learned counsel for the revenue at length, however, we are not in a position to take any different view than the one taken by the Coordinate Bench in the matter of Assistant Commissioner of Income Tax- Circle-1(2) vs M/s R.P. Real Estate Pvt. Ltd. In the said matter, this Court has referred to the order passed by Gauhati High Court in [Walford Transport (Eastern India) v. CIT] 1999-240 ITR 902 and Saraswati Housing & Developers v. Additional Commissioner of Income Tax, (2013) 142 ITD 0198, Delhi Bench (G) to hold that once the Appellate Court and the Tribunal have concurrently found that the explanation offered by the assessee as to why the cash payments made to the sellers is acceptable, the

same does not involve any substantial question of law as the reasoning assigned and the interpretation applied by the Tribunal and the CIT (Appeals)

are duly supported by the judicial precedents.

8. In view of the above, we find no substance in this appeal as it does not involve any substantial question of law. Accordingly, the appeal is dismissed.