

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAX CASE (INCOME TAX APPEAL) NO. 13 OF 2016

Asstt. Commissioner of Income Tax- Circle- 1(2), Raipur, District Raipur
(C.G.)

... Appellant

Versus

M/s R.P. Real Estate Pvt. Ltd., B-62, Khamardih, Shankar Nagar, VIP
Estate, near VIP Club, Raipur, Raipur (C.G.)

... Respondent

For Appellant : Ms. Naushina Afrin Ali, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

01/03/2016

1. The present appeal has been filed against order dated 17.7.2015 allowing I.T.A. No. 173/BLPR/2011, passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur in regard to the assessment year 2008-09.

2. Learned Counsel for the Appellant submits that the Assessing Officer imposed liability to tax on ₹61,06,000/- applying Section 40A(3) of the Income Tax Act (hereinafter referred to as 'the Act') which 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 account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure. It was an admitted position on behalf of the assessee that payments to the extent of ₹61,06,000/- had been made in cash to four different persons towards payment of purchase price for

lands as the assessee is engaged in the business of real estate dealings and construction of multistoried buildings. The Assessing Officer has recorded his satisfaction that no plausible explanation was given why payments were made in cash contrary to law. The assessee was duly noticed under Section 143(2) of the Act and was heard in the matter.

3. The Commissioner Income Tax (Appeals) after hearing the assessee and the departmental representative concluded that payments were made in cash to actual identified recipient land owners from whom purchase was made by duly registered purchase deed with the identity of each seller established beyond doubt and the genuineness of the payments also confirmed by the registered deeds. The Appellate Authority dwelt into the introduction of Section 40A(3) of the Act by circular dated 6.7.1968 in the Finance Act, 1968 with effect from 1.4.1969 holding that the purpose of inserting the provision in the Act was not to penalise a bonafide assessee for making cash payment above the prescribed limit. The purpose was preventive to check evasion of tax and flow of unaccounted money or to check transactions which were not genuine and which may be a camouflage to evade tax by showing fictitious and false transactions. In support of his conclusions the Appellate Authority relied upon in 1999 240 ITR 902 Gauhati [Walford Transport (Eastern India) v. CIT]. The payment could be allowed towards expenditure if circumstances so warranted keeping in mind considerations of business expediency and other relevant factors as may be permissible under the rules. The Appellate Authority therefore arrived at the conclusion that in the facts of the case the Assessing Officer had acted mechanically without due and proper application of mind to statutory provisions.

4. In appeal before the Tribunal, the departmental representative in a rhetorical manner simply relied upon the order of the Assessing Officer without any ground to assail the order of the Commissioner of Income Tax (Appeals). The Tribunal again noticed that full payment had been made to the seller under the registered deeds was not disputed by the Assessing Officer and neither was the identity or genuineness of the sellers in dispute or the contention of the assessee that the sellers being villagers had no bank accounts and therefore insisted on cash payment. The Tribunal held that payment in cash was out of business compulsion and not optional. The Tribunal held that the facts of the case were in pari materia with *Saraswati Housing & Developers v. Additional Commissioner of Income Tax*, (2013) 142 ITD 0198, Delhi Bench (G). Reference may also be made to Rule 6DD(g) & (j) permitting cash payments for reasons specified and which reads as follows:-

“6DD. No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where 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 account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely :-

XXX

XXX

XXX

(g) Where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;

XXX

XXX

XXX

(j) Where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike.”

5. The Tribunal has interpreted the aforesaid to hold that cash payments above twenty thousand rupees could be accepted if the conditions prescribed in the rules were fulfilled to the satisfaction of the authority concerned. The reasoning of the Tribunal and the interpretation by it of Section 40A(3) and Rule 6DD(g) supported by judicial precedents have not been assailed in this appeal and no submission has been made before us with regard to the same. We are satisfied that the appeal ought not to have been filed and raises no substantial question of law for determination under Section 260A of the Act.

6. Before parting we consider it appropriate to quote the following extract from the CBDT circular dated 10.12.2015 :-

“It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.”

7. There is no merit in the appeal. The appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge