

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 1959/Del/2013  
(Assessment Year: 2009-10)

ITO, Ward-1(3), Ghaziabad	Vs.	Kailash Nath Mishra, B-62A, Nand Gram, Ghaziabad PAN:ADBPM4444J
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by :	None
Revenue by:	Sh. Umesh Chand Dubey, Sr. DR
Date of Hearing	9/11/2016
Date of pronouncement	03/02/2017

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This is an appeal filed by the revenue against the order of the Id CIT(A), Ghaziabad dated 03.01.2013 for the Assessment Year 2009-10.
2. The revenue has raised the following grounds of appeal:-
  - "1. That the Id CIT(A) has erred in law and on facts in deleting the addition of Rs. 9263310/- without appreciating that the assessee failed to reconcile this amount this sufficient documentary support before the AO.
  2. That the Id CIT(A) has erred in law and on facts ignoring the fact that the books of accounts so produced by assessee were not supported by any supporting evidence and he failed to discharge its onus.
  3. Therefore, the order of the Id CIT(A) be cancelled or set aside and the order of the AO may be restored."
3. The ground No. 1 and 2 of the appeal are that the Id CIT(A) erred in deleting the addition of Rs. 9263310/- without appreciating the absence of documentary support as evidence.
4. The brief facts of the case is that the assessee is earning income from business filed his return of income on 30.08.2009 of Rs. 495153/-. During the course of assessment proceedings it was noted that details of credit entries in the bank accounts works out of Rs. 26478650/- and therefore, the assessee explained that the difference between turnover declared by the assessee and bank deposits. The assessee also explained that transfer

entries have also happened from one account to another account and therefore, the total deposit is explained. The assessee received material from tax deductor i.e. the Principal from whom the contract for electrical and mechanical Ericson was obtained of Rs. 8526003/- and other deduction of Rs. 29803/- coupled with PF deduction of Rs. 707504/-. The Id Assessing Officer did not believe the explanation of the assessee and made an addition of Rs. 9263310/-. On appeal before the Id CIT(A), the above addition was deleted. Therefore the revenue is in appeal before us.

5. The Id DR relied upon the order of the Id Assessing Officer whereas the Id AR relied upon the order of the Id CIT(A).
6. We have carefully considered the rival contentions and the Id CIT(A) has deleted the above addition while dealing ground No. 1 after obtaining remand report and rejoinder of the assessee vide para No. 9 of his order which is as under:-

*“9. After careful consideration of all the facts on records and rival submission as contained in assessment order, in appellant’s submission and remand report, my observation/ conclusion are as under:-*

*9.1 The appellant is a contractor engaged in the job of engineering contract and the major work has been undertaken with UB Engineering Limited, Pune-I, have also considered the submissions made by the AC where he has observed that it is noticed from the details of credit entries of the bank account that the deposit in the bank account works out to R.s. 2,64,78,650/- (after giving benefit of increase in sundry debtors & TDS) whereas the turnover declared by the assessee amounted to Rs. 3,73,95,699/- resulting into difference of Rs. 92,87,700/-. The assessee was asked to reconcile the difference. In response vide reply dated 14.12.11, AR of the assessee furnished the reconciliation and from which it was noticed that he has also taken into account transfer entry iron, one bank account to other also, cash deposit and also claimed material received from deductor of Rs. 85,26,0037-, PF deduction of Rs. 7,07,504/- and medical and other deduction of Rs. 39803/-. The assessee was once again asked to give evidence of claim of material supplied etc. As per AO the Assessee had no explanation to offer. AO also found it surprising as to how the assessee is claiming expenses on account of material received from deductor of Rs. 8526003/-, PF deduction of Rs. 707504/- and medical and other deduction of Rs. 29803/- when there is no evidence with him. Accordingly, the said expenses of Rs. 9263310/- was disallowed and added to the income of the assessee.*

*I have also considered the reply filed on the point by the counsel. It has been contended that there is no point of making addition since the deposits in the bank are not in excess of the contract receipts rather the*

deposits are lesser by the amount of deduction of cost of material and ESI and PF by the principals. The appellant also filed statement of account from M/s U.B. Engineering Limited along with certified copies of the bills and vouchers indicating the supply of the material by M/s U.B. Engineering and deductions made by the while making payment to the appellant for the cost of the material, ESI and PF etc.

I found that these justify the deduction and also the fact that the deposit of the contract amount in the bank were lesser by the amount of deduction made. It is not clear how the AO has concluded that the short deposit in the bank by the amount of deduction of the following amounts would lead to addition to the income of the appellant,

i.	Cost of material deducted by the principle	Rs. 85,26,003/-
ii.	PF Deduction	Rs. 7,07,504/-
iii.	Medical and other deductions	<u>Rs. 29,803/-</u>
		Rs. 92,63,3 10/-

The documents and the reply filed by the appellant were forwarded by the to the AO for his comments and a reply was received from the AO that the assessee did not make compliance on the date fixed for the verification. I also find that the appellant has rebutted the contention of the AO by stating that the date mentioned by the AO for compliance do not match with the date of the letter alleged to have been issued by him .

Thus, all the documents such as certified vouchers of the supply of the material, PF deduction and medical and other deductions, the bank statement of the appellant and certified copy of the statement of account of the appellant from the books of M/s U.B. Engineering Limited were again forwarded to the AO with the specific direction to serve a notice on the appellant and to verify. The AO has sent his report vide letter dated nil which is reproduced below:

As per your kind consideration, Sh. Kailash Nath Mishra( assesses) was required to produce all the books of account alongwith bills and vouchers. The date fixed for the purpose was 29.10.2012. on the date fixed the counsel of the assessee requested for adjournment and the case was adjourned for 06. 11. 2012.

On the date fixed i.e. **06.1 1.2012.SH.** Kailash Nath Mishra attended along with Shri Ram Kumar Sharma, advocate and produced only cash book and ledger. No other books of accounts alongwith bills and vouchers were produced by him. Therefore it is not possible to examine the correctness of accounts....."

This report was again confronted to the appellant vide notice dated 04.12.2012 and a reply to this report has been also received from the appellant and the reply has been very carefully considered by me where the appellant has contended that the report of the assessing officer itself suggest

*his casual approach to the subject. The appellant has contended that the AO was not inquired to frame fresh assessment nor he was required to verify expenses with vouchers and bills as are debited to the profit and loss account.*

*I agree with the appellant's contention that the AC) was required to verify the contention of deduction of cost of material out of the payment made to the appellant by U.B. Engineering Limited besides deduction for PF and medical expenses etc. In support of these deductions the complete set of paper book containing certified copies of the statement of account of the appellant from the books of U.B. Engineering Limited, the certify copy of the vouchers and statement showing day to day supply of material and the cost deducted out of the payment were all forwarded to the AO and nothing more was required sir/-these were already available before him. The AO was required to verify -lie claim of the appellant with reference to these documents, bills, vouchers and statement of account and if the AO so desired, he could have verified these documents from the company namely U.B. Engineering Limited. It is seen that the AO has failed to carry out this exercise and has rather avoided to carry in the verification from the company when all the documents were made available to him for his comments. I have also personally examined the contention of the appellant with reference to the statement of account of the appellant received from the books of U.B. Engineering Limited with reference to the certified copies of the statement of supply of material and the deductions made from the payment and these are all verifiable. I have also examined the bank account of the appellant and it is seen that the amounts of deposits in the bank are lesser by the amount of the deductions made by the company namely U.B. Engineering Limited and others. The case would have been different had the deposit in the bank exceeded the gross receipts declared by the appellant in his profit and account.*

*After considering the submission made by the appellant, the observed of the AO and the comments received from the AO, I have come to the conclusion that the AO was not justified to make addition of Rs. 9263310/- to the income of the appellant in respect of the deductions made by the company name U.B. Engineering Limited for the cost of the material supplied by them the deduction towards PF and medical and other expenses of the employees. I he addition of Rs. 92,63,310/- made by the AO is thus deleted. The appellant gets a relief of Rs. 92,63,310/-.”*

7. The 1d DR could not point out any infirmity in the order of the 1d CIT(A). in the present case the whole addition has been made by the Assessing Officer merely relying upon Form 26AS without making further enquiry. Whereas the 1d CIT(A) has looked at the complete aspect of the contract and reconciliation of the assessee with respect to complete financial statements. In view of this we confirm the finding of the 1d CIT(A) in deleting the addition

of Rs. 9263310/-. In the result ground No. 1 and 2 of the appeal are dismissed.

8. In the result appeal of the revenue is dismissed.

**Order pronounced in the open court on 03/02/2017**

**-SD/-**

**(H.S.SIDHU)  
JUDICIAL MEMBER**

**-Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated: 03/02/2017

*A K Keot*

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi