

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-I' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-4990/Del/2016
(ASSESSMENT YEAR-2012-13)**

Arvind Dev, B-56, DDA MIG Flats, East of Loni Road, Shahdara, Delhi-110093. PAN-AEMPD3878D (APPELLANT)	Vs	ITO, Ward-56(3), New Delhi. (RESPONDENT)
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Assessee by	Sh.Bhavesh Kumar, CA
Revenue by	Sh.F.R.Meena, Sr.DR
Date of Hearing	10.11.2016
Date of Pronouncement	12.01.2017

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 21.07.2016 of CIT(A)-19, New Delhi pertaining to 2012–13 assessment year on the following grounds:-

- 1.1. *“That under the facts and circumstances, the CIT(A) erred in not deleting addition on account of job work charges of Rs.11,14,152/-.*
- 1.2. *That the addition is unjustified and unsustainable in law as well as on merits in view of the complete details and documents being furnished before AO.*
- 1.3. *That without prejudice, no addition can be made under the facts and circumstances of the case.”*

2. The relevant facts of the case are that the assessee in the year under consideration returned an income of Rs.5,14,781/-. The said return was selected for scrutiny under CASS. The assessee is a proprietor of M/s Tanishq Ions and the main business of the assessee firm was stated to be trading of water treatment plants. The Assessing Officer in the course of the assessment proceedings required the assessee to explain the debited Rs.11,57,505/- under the head Job Work Charges. The explanation offered was not accepted on the following reasoning:-

(B) Job Work Charges

“On perusal of profit and loss account filed by the assessee, it is noticed that the assessee has debited Rs.11,57,505/- under the head Job Work Charges. The AR of the assessee was asked to furnish complete partywise details with PAN number and addresses. In response to this, the AR of the assessee has filed details vide letter dated 16.03.2015. On perusal of details filed by the assessee, it reveals that the assessee has not deducted TDS on the entire amount of Job

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Work. Moreover, the payment to these parties has not been made through the bank account. Therefore, it is clear that either these are the bogus expenses or the assessee has made cash payment to these parties. Accordingly, this fact was confronted before AR of the assessee that the assessee has violated the provisions of section 40A(3) and 40(a)(ia) of the IT.Act. 1961. In response to this, the AR of the assessee has not submitted any explanation till date of passing of the order. In view of these facts, Rs. 11,57,505/- are disavowed and added to the income of the assessee u/s 40(a)(ia)/40A(3) of I.T.Act, 1961. Penalty proceedings u/s 271(1)(c) is being separately initiated for furnishing inaccurate particulars of income.”

(Disallowance Rs. 11,57,505/-)

3. The assessee carried the issue in appeal before the First Appellate Authority, stating that *“All the details of job works such as amount, party name alongwith their PAN card photocopies were provided to **Mr.Jai Prakash** and Income tax Officer.”* However, the AO also required *“fabricated job work details”* of a few parties which were not shown *“as it was hard to handle so much documents.”* Addressing the lack of TDS deduction, it was submitted *“all the job work was less than of Rs.60,000/- which does not come under TDS deduction.”* The following serious allegation is also found to have been made before the CIT(A) and is found reproduced in his order *“**At that time we were not aware that Mr.Jai Prakash would use this tactic to blackmail us for his bribe demand. Nothing was bogus and we have all the relevant documents and parties.**”*

4. However, considering the fact that payment was made to atleast six persons of amounts on which TDS should have been deducted the addition made was confirmed.

5. The Ld.AR submitted that the Remand Report was never confronted to the assessee and infact it is a case of harassment of the assessee. The Ld. Sr.DR was also unable to state whether the Remand Report has been confronted to the assessee or not. In the circumstances, Ld.AR requested for a remand which was not objected to by the Id.Sr.DR.

6. I have heard the rival submissions and perused the material available on record. On a consideration of the afore-mentioned peculiar facts and circumstances of the case and considering the submissions of the parties before the Bench, it is deemed appropriate to set aside the impugned order and restore the issue back to the file of the CIT(A) directing the said authority to confront the Remand Report to the assessee and after affording a

reasonable opportunity of being heard and taking into consideration the explanation offered if any the Ld.CIT(A shall pass a speaking order in accordance with law.

6.1. Before parting it may not be out of place to suggest that the serious allegations made by the assessee in writing before the CIT(A) on the conduct of Mr. Jai Prakash which the Ld. Commissioner has deemed it appropriate to reproduce should not ideally be left administratively unaddressed. The tax administration should not be seen to be helpless to address the mal-practice alleged as such a perception would not only interfere in justice delivery system but may also appear to suggest a tacit acceptance of the deviant behavior. Such a perception it goes without saying would largely erode the trust and faith placed by the taxpayers in the expectation of fairness and impartiality of the department. Ignoring such administrative complaints either against a regular employee or an outsourced employee would be detrimental to the administrative control and at the cost of harming the legitimacy of the tax department. The relevant para is extracted from the impugned order for appropriate administrative corrective action:-

*D. "Refer to Para B (Job Work charges). All the details of job works such as amount, party name alongwith their PAN card photocopies **were provided to Mr.Jai Prakash and Income tax Officer.** But they asked us to provide few nos. of the fabricated job work details as it was hard to handle so much documents. As per TDS is concerned all the job work was less than of Rs.60,000/- which does not come under TDS deduction. **At that time we were not aware that Mr.Jai Prakash would use this tactic to blackmail us for his bribe demand. Nothing was bogus and we have all the relevant documents and parties.**"*

(emphasis provided)

7. In the result the appeal of the assessee is allowed for statistical purposes

The order is pronounced in the open court on 12th of January 2017.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR,
ITAT NEW DELHI