

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC-2" NEW DELHI  
BEFORE SHRI P.K. BANSAL : ACCOUNTANT MEMBER

ITA no. 3478/Del/2015

Asstt. Yrs: 2008-09

Harendra Kumar Sharma  
8, Chandpur Road, Surya Nagar,  
Bulandshahr.

Vs. DCIT, Circle, Bulandshahr.

PAN: AONPS 8200 D

( Appellant )

(Respondent)

Appellant by : Shri Rakesh Gupta Adv. &  
Shri Somil Agarwal Adv.

Respondent by : Shri P. Dam Kanunjna Sr. DR

Date of hearing : 13/11/2015.

Date of order : 30/11/2015.

**ORDER**

This appeal has been preferred by the assessee against the order dated 27/02/2015, passed by the CIT(A), Ghaziabad, in appeal no. 156/2010-13/GZB-BSR/367or A.Y. 2008-09.

2. The only issue involved in this appeal relates to the sustenance of addition of Rs. 5 las made by the AO.

3. I heard the rival submissions and carefully considered the same. I noted that in this case the AO noticed that the assessee had shown the gross contract receipts at Rs. 42,31,703/-. The accounts were duly audited, against which the assessee has claimed an expenditure of Rs. 39,20,259/-. The assessee received a sum of Rs. 17,32,211/- on contract from Executive Engineering, Bulandshahr, on which the

TDS of Rs. 44,245/- was deducted but in the P&L A/c the receipt was Rs. 12,32,211/-. The AO, therefore, reopened the assessment and asked for the explanation of the assessee. The assessee vide letter dated 23/10/2012 submitted that the work was sub-contracted to one Shri Damodar Singh S/o Chidda Singh, whose affidavit was also filed by the assessee. Shri Damodar Singh was also produced and his statement was also recorded on 29-10-2015. On the basis of his statement the AO took the view that Shri Damodar Singh was not a literate person and no knowledge of accounts, had not made any purchase of material for contract work and had stated that all material etc. was given by the assessee. Therefore, it could not be accepted that the assessee had sub-contracted the work for Rs. 5 lacs. The AO, therefore, made the addition of Rs. 5 lacs. When the matter went before the CIT(A), the CIT(A) confirmed the same.

4. The assessee has shown the net contract receipt in the P&L A/c at Rs. 42,31,703/- even though the gross contract receipt was Rs. 47,31,703/-. It is not a case that the sum of Rs. 5 lacs has been debited by the assessee to the P&L A/c. Once the assessee has sub-contracted the contract to a sub-contractor, naturally the contract receipts to that extent will get reduced. It is the net contract receipt which will be the receipt of the assessee. So far the party who has given the contract is concerned, is bound to deduct the TDS on the gross amount paid to the assessee. He has nothing to do with the internal management of the assessee that the assessee has sub-contracted the contract to a third party. It is also not the case of the revenue that the assessee has failed to deduct the TDS on the sub-contract given to one Shri Damodar Singh. Merely a person is illiterate, it cannot be said that he could not undertake any sub-contract. In my opinion, the observation made by the authorities below are just based on surmises and conjectures. No conclusive evidence has been brought on record so as to reject the affidavit of Shri Damodar

Singh. In view of these facts, I set aside the order of CIT(A) and delete the addition of Rs. 5 lacs.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in open court on 30/11/2015.

Sd/-  
(P.K. BANSAL)  
ACCOUNTANT MEMBER

Dated: 30/11/2015.

**\*MP\***

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.