

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 471/Hyd./2017 : Asstt. Year : 2011-12**

Shaik Abdul Hameed, Prop. M/s General Trading Corporation, H.No.A-54, Ground Floor, Hauzkas, Opp. Police Station, New Delhi-110016	Vs	Deputy Commissioner of Income Tax, Central Circle-2(1), Hyderabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. ABBPH8500Q</b>		

**ITA No. 273/Hyd./2017 : Asstt. Year : 2011-12**

Deputy Commissioner of Income Tax, Central Circle-2(1), Hyderabad	Vs	Shaik Abdul Hameed, Prop. M/s General Trading Corporation, H.No.A-54, Ground Floor, Hauzkas, Opp. Police Station, New Delhi-110016
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. ABBPH8500Q</b>		

**Assessee by : None**

**Revenue by : Sh. Sanjay Goel, CIT DR&  
Sh. Rajesh Kumar, Sr. DR**

<b>Date of Hearing: 20.02.2020</b>	<b>Date of Pronouncement: 11.03.2020</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The appeals of the assessee and the revenue are directed against the orders of Id. CIT(A)-12, Hyderabad dated 20.10.2016.

2. In ITA No.471/Hyd./2017, following grounds have been raised by the assessee:

*"1. Estimation of net profit @25% of contracts is not correct especially when the appellant is a sub-contractor."*

*2. Any other grounds that may be urged at the time of hearing."*

3. In ITA No. 273/Hyd./2017, following grounds have been raised by the revenue:

*"1. On the facts and in the circumstances of the case, the CIT(A) erred in allowing 75% of the expenses on unaccounted gross contract receipts, without appreciating the fact that the assessee has not shown any unaccounted expenditure on unaccounted receipts. The assessee undoubtedly must have booked all his accounted/unaccounted expenditure but has not shown complete receipts which should be added without giving any deduction for unaccounted expenditure.*

*2. The CIT(A) has not appreciated the fact that the assessee has not shown any evidence of sources to the cash deposits in the bank amounting to Rs.44,90,300/- and the assessee admitted that there was no known source of the amount of cash deposits."*

4. The assessee is a proprietor of M/s General Trading Corporation having head office in New Delhi undertaking sub-contracts especially with M/s KNR Construction Ltd. The assessee filed return of income for the assessment year 2011-12 declaring income of Rs.3,41,88,460/-. In the assessment proceedings, the assessee also filed revised statement of total income declaring additional income of Rs.30,14,973/-. The assessment was completed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 at Rs.11,70,11,256/- by making two separate

additions of Rs.7,83,32,496/- and Rs.44,90,300/-. The first addition came under the head suppression of contract receipts and second addition came on account of unexplained cash credits. The assessee filed appeal before the Id. CIT(A)-12, Hyderabad and the appeal was partly allowed by deleting both the additions and retained the estimated income from additional contract receipts of Rs.7,83,32,496/- at 25% as against 10.12% profit admitted by the assessee.

5. Aggrieved by the order of the Id. CIT(A)-12, Hyderabad, the assessee filed appeal before the Tribunal against the confirmation of estimated net profit of 25% of contract receipts and the revenue filed appeal against the deletion of 75% of the estimated net profit and deletion of cash deposits in the bank. Since, the issue of estimation of profits is common in both the appeals, the ground is being adjudicated combinedly.

**Estimated Net Profit:**

6. Facts relevant to the issue are as under:

The gross receipts of the assessee for the FY 2011-12	Rs.28,68,28,106/-
Net profit declared in the return dated 08.12.2011	Rs.3,39,47,936/-
Revised gross receipts	Rs.36,51,60,602/-
Revised net profit	Rs.3,69,62,903/-

7. The Id. CIT(A) has accepted the financials declared by the assessee during the adjudicatory process. The revised P&L account has been filed before the Assessing Officer during the assessment proceedings which the AO did not take

cognizance of. After examining the e-TDS returns of the contractee/deductor M/s KNRCL, the Id. CIT(A) has accepted the revised work receipts which have been hitherto shown as advances. The Id. CIT(A) has also held that the assessee has also shown the profits on the revised receipts. The Id. CIT(A) having considered the entire matter considered the receipts and the profits thereof. While the Assessing Officer has made addition of the entire revised receipts to the total income, the Id. CIT(A) found it fit to be reasonable to estimate the net profits @25% of the receipts.

8. We have perused the entire records before us. We find that the Id. CIT(A) has estimated the profits @25% of the receipts on the grounds that it is a reasonable estimation of profits.

9. The Hon'ble High Court of Gujarat in the case of CIT Vs President Industries 250 ITR 654 held that the entire sum of the receipts cannot be treated as income of the assessee. Reliance is also placed on the order of Co-ordinate Bench of ITAT Delhi in the case of K. Ahmad in ITA No. 2410/Del/2013 wherein it was held that the entire receipts cannot be treated as income.

10. Having said that the question arises what could be the correct net profit of the assessee. The Id. CIT(A) has not given any rationale for determining net profit @25%. The assessee is in the business of undertaking sub-contract works for its principle namely, M/s KNRCL. Section 44AD of the Act presumes NP rate of 8% on the total receipts and 6% in the case of digital receipts. Hence, keeping in view the market averages, operating profits in the line of business of the assessee and in the similar

construction sub-contracts, we hereby hold that the net profit of 10.12% on the gross receipts be considered to compute the business profit of the assessee. The appeal of the assessee on this ground is treated as allowed.

**Addition u/s 69A:**

11. The AO made addition of the deposits in the bank account of the assessee u/s 69A of the Act. The Id. CIT(A) deleted the addition as the assessee had shown an amount of Rs.30,14,967/- as additional income in the returns and hence any further addition would amount to double taxation. The relevant portion of the order of the Id. CIT(A) is as under:

*"6.1 During the course of assessment proceedings, it has been observed that the assessee made cash deposits in bank to the tune of Rs.55 lakhs. On being asked to explain, the assessee submitted a cash flow statement with an opening balance of Rs.16,924/- and entries for receipts to the tune of Rs.44,90,300/-, and the source of such receipts is shown by the assessee, as the taxed incomes to the assessee himself. However, the AO did not accept the submissions of the assessee, as he could not explain the source for the cash receipts/deposits, and accordingly, the AO treated the amount of Rs.44,90,300/- as unexplained money and added back the same to the Income returned.*

*6.2. While objecting to the additions stated above, it has been submitted that the sources for the said credits are the funds out of business as well as the taxed incomes. While continuing the submissions, it has been submitted that during the assessment proceedings revised P&L account was filed admitting additional income of Rs.30,14,967/- which also provides the additional sources of income and the AO ought to have given telescopic benefit of the said additional incomes admitted.*

*6.3 Perused the submissions of appellant and the observations of the Assessing Officer in the Assessment Order. As could be seen from the facts of the case, the additions were made on account of credits*

*into bank account of the assessee during the year which was to the extent of Rs.44,90,300/-by treating the same as unexplained incomes, in absence of clearly explainable sources. However, it is a fact that the assessee had admitted additional incomes during the course of assessment proceedings, on account of the unaccounted income from contract receipts and the assessee had taken an alternate plea through which he sought telescopic benefit, to explain the said credits into bank account. In this regard, it may be relevant to observe that where the income had been admitted or estimated on the basis of source, need not be assessed again on the basis of investments, provided that such earnings are preceding the investments during the same year, failing which it amounts to assessment of the same income twice and resulting in double taxation."*

12. We have gone through the facts of the case. Since, the amounts have been duly reflected and stands offered to tax, we decline to interfere with the order of the Id. CIT(A). The appeal of the revenue is dismissed on this ground.

13. In the result, the appeal of the assessee is allowed and the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 11/03/2020.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

**Dated: 11/03/2020**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**