

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B" KOLKATA**
Before Hon'ble **Shri A.T.Varkey, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA. No.677/Kol/2013
Assessment Year : 2009-10

I.T.O., Ward-53(4), Aayakar Bhawan, Dakshin, 2, Gariahat Road South, Kolkata-700068.	V/s.	Shri Nirapada Patra, Uttar Srinagar, Srinagar Makarpara Kakdwip, 24 Parganas(S) PIN:743374. PAN No AWEPP 4330 Q
अपीलार्थी /Appellant		
..		प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri M.K.Chanda, HCIT Sr.DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	25.01.2017
घोषणा की तारीख/Date of Pronouncement	17.03.2017

आदेश /ORDER

Per Waseem Ahmed, AM

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals)-XXXIII, Kolkata dated 28.01.2013. Assessment was framed by ITO Ward-53(4), Kolkata u/s 143(3) of the Income tax Act, 1961 (hereinafter referred to as 'the Act ') vide his order dated 26.12.2011 for assessment year 2009-10.

2. At the time of hearing none appeared on behalf of assessee though notice of hearing sent to assessee through RPAD. So we decide to hear the present appeal where we find that the hearing is possible without appearance of assessee or by Ld. Authorized Representative of assessee. Shri M.K. Chandra, Ld. Departmental Representative represented on behalf of Revenue.

3. The solitary issue raised by the Revenue in this appeal is that whether the Id. CIT(A) is justified in reducing the cash deposit income of Rs.19,25,125/- and income on account of ABC Engg. Works for Rs.17,52,020/- to Rs.2,94,172/- being 8% of the gross receipts i.e. Rs.36,77,150/- (19,25,125 + 17,52,020).

4. The facts in brief are that the assessee in the present case is an individual and is engaged in the business of labour contracts. It was revealed on the basis of AIR information that the assessee has deposited cash of Rs.19,25,125/- in his saving bank account in the year under consideration. On question by the Assessing Officer about the source of cash deposit the assessee submitted that this money was deposited in his bank account by the contractee. The assessee further in support of his claim submitted profit and loss account, balance sheet, and revised computation of total income. However, the AO observed that the claim of the assessee is not based on any reliable documentary evidences. Accordingly, he rejected all the books of accounts of the assessee and treated the entire cash deposit as income of the assessee.

Similarly, the AO also observed that ABC Engg. Works has deposited TDS of Rs.19,850/- in the name of the assessee but its corresponding income of Rs.17,52,020/- was not disclosed in the income tax return and the income from ABC Engg. Works is also evident from Form No. 26AS. Accordingly the AO treated the same as income of the assessee. In view of the above, the AO has disallowed the claim of the assessee and added a sum of Rs.19,25,125/- and Rs.17,52,020.00 as income of the assessee.

5. Aggrieved, the assessee preferred appeal to the Id. CIT(A). The assessee before the Id. CIT(A) submitted that it is showing the commission income in its books of accounts. The commission income was earned by the assessee on the supply of labour to its parties. The contractee deposited the money directly in the accounts of the assessee and the assessee made the payments to the workers after withdrawing the money from the bank. As a result, the assessee has shown its net income which was arrived after deducting the payments to the workers

from the gross amount received from the contractees. In fact the total gross receipts of Rs. 95,34,828/- was received by way of cheque and cash on account of labour supply. The gross receipt is inclusive of the cheque received from ABC Engg. Works and from other contractors. The assessee further submitted that they were illiterate persons and do not understand the accounting system and therefore necessary books of accounts were neither maintained nor submitted. However, the Id. CIT(A) after considering the submissions of the assessee has given relief in part by observing as under :

"5. I have considered the submission made. On perusal of the bank statement of the appellant, it is seen that there are continuous cash deposits and withdrawals on regular basis with no significant amount remaining in the account for a long period. Thus, the nature of the transactions in the account do support the assertion made by the appellant that the credits therein were on account of turnover of business. It is also seen that the explanation that cash was deposited in the bank account by the principals for purpose of disbursement among labour was given before the assessing officer also and he summarily rejected the same without pointing out any specific discrepancy or making further investigation. So far as the amount of Rs. 17,52,020/- from ABC Engineering Works is concerned, Form no. 26 AS itself shows that the amount paid was towards contract on which tax have been duly deducted at source in accordance with the provisions of section 194C. It goes without saying that entire contract receipt can never be income and only the net income after deducting corresponding expenses is to be taxed. From the foregoing discussion, it is clear that the amount received from ABC Engineering Works was in nature of contract receipt. Surrounding facts and circumstances suggest the same to be true in respect of cash deposits of Rs. 19,25,125/-. Therefore, the two amounts are to be considered contract receipts and not income as such.

6. Now, the question arises as to how income from the above receipts is to be arrived at. The appellant has claimed that the two amounts from part of gross receipt of the appellant's income from which has already been offered for taxation in the name of 'commission'. However, this assertion is not backed by any supporting evidence. It has been admitted by the authorized representative of the appellant that due to the appellant being illiterate the books of accounts were not maintained in proper manner and the system of accounting followed was not totally correct. The profit and loss a/c filed with the return was not showing gross receipts not to talk of their party-wise break up. Hence, it is not practicable to verify the claim that the receipts from ABC Engineering Works as well as cash deposited were forming part of receipts accounted for by the appellant. The revised profit and loss a/c. submitted can also not be treated as reliable in absence of proper supporting material. Therefore, it is not possible to accept the assertion made by the appellant regarding receipts from ABC Engineering Works and cash deposited having been part of duly accounted receipts. Therefore, the said receipts are being treated as unaccounted. As the appellant is not maintaining proper books, it is not possible to ascertain true profit on the same. Since the appellant is a labour contractor and the said receipts are contract receipts with aggregate amount of Rs. 36,77,145/-, I consider it reasonable to apply net profit rate of 8% as provided u/s. 44AD of IT Act. In course of the

appellate proceedings, the authorized representative of the appellant could not counter this proposition. The profit from the said receipts at the rate of 8% works out to Rs. 2,94,172/-. The assessing officer is directed to reduce the addition accordingly."

Being aggrieved by the order of the Id. CIT(A) the revenue is in appeal before us.

6. Before us Id DR vehemently relied on the order of authorities below.

7. We have heard the Ld. DR and perused the materials available on record. The issue in the instant case relates to the additions made by the AO. These additions were made by the AO on account of 2 counts *firstly* the cash deposited by the assessee in the bank *secondly* ABC Engg. Works has shown payment to the assessee in form 26AS. Both these amounts were not reflecting in the income tax return. Therefore the additions were made by the AO. However the Id CIT(A) during appellate proceedings observed that the balance in the bank account of the assessee was of meager amount continuously. There were deposit & cash withdrawal as well simultaneously. Therefore entire addition of cash deposit cannot be taken as income of the assessee.

Admittedly, the assessee has not maintained the books of accounts in its regular course of business. Therefore, the assessee failed to explain the source of cash deposit in the bank and the amount shown in form 26AS in the name of M/s ABC Engg. Works on the basis of accounts. However, on the examination of the orders of lower authorities we find that there is no doubt that the aforesaid two amounts represent of the business receipt of the assessee. It is, because the party ABC Engg. Works in the instant case has deducted TDS u/s 194C of the Act. Thus, the claim of the assessee is that he is engaged in the business of labour supply gets fortified from the deduction of TDS made by the party ABC Engg. Works u/s 194C of the Act. Once, it is established that the amount of money represents the business receipt then in our view only the profit element can be added to the total income of the assessee. It is because the entire amount deposited with the bank or shown in the TDS details cannot be held as business income of the assessee. It was also observed that there was only

meager amount lying in the bank account of the assessee as is evident from the finding of Id CIT(A) which justifies that the assessee received the money from the contractee and subsequently made payment to the laborers. Had there been money lying in the bank account of the assessee than the possibility of treating the entire amount as income of the assessee was there? Therefore, in the facts and circumstances of the case the Id CIT(A) was justified in treating the aforesaid amount as business receipts of the assessee and accordingly working out the total income of the assessee. Thus, we find no reason to interfere with the findings arrived by the Ld. CIT(A). Under the circumstances this issue of Revenue's appeal is dismissed.

8. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open court 17/03/2017

Sd/-
(न्यायिक सदस्य)
(A.T.Varkey)
(Judicial Member)

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

RG.PS/Dkp

दिनांक:- 17/03//2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO Ward-53(4), Aayakar Bhawan, Dakshin2 Gariahat, Road, South, Kol-68
2. प्रत्यर्थी/Respondent-Shri Nirapada Patra, Uttar Srinagar, Srinagar, Makarpara, Kakdwip, 24 Pgns.(S)
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Kolkata / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।