

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'SMC' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 786/KOL/ 2016
Assessment Year: 2005-2006**

Susanta Biswas,.....Appellant
Priyadarshini Apartment,
Indradeep Housing Complex,
Block-B, Flat No. GD, 111/A, Dum Dum Road,
Kolkata-700 074
[PAN: AGEPB 8054 D]

-Vs.-

Income Tax Officer,.....Respondent
Ward-50(4), Kolkata,
Uttarapan Market Complex,
Kolkata-700 054

Appearances by:

Shri H.S. Bhattacharjee, F.C.A., for the assessee

Shri Amitava Bhattacharjee, Additional CIT, D.R., for the Department

Date of concluding the hearing : December 21, 2016

Date of pronouncing the order : February 03, 2017

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-15, Kolkata dated 18.02.2016 and the solitary issue involved therein relates to the addition of Rs.11,68,929/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of understatement of contract amount received by the assessee.

2. The assessee in the present case is an individual, who is engaged in the business as a labour contractor. He mainly does the contracting work for M/s. Simplex Infrastructures Limited. The return of income for the year under consideration was filed by him on 28.08.2005 declaring total income of Rs.2,78,400/-. In the assessment originally completed under

section 143(3) vide order dated 28.12.2007, a sum of Rs.11,68,929/- receivable from M/s. Simplex Infrastructures Limited was added by the Assessing Officer to the total income of the assessee as the same was not appearing in the current assets of the assessee. On appeal, the Id. CIT(Appeals) deleted the said addition vide his appellate order dated 18.03.2008. On further appeal by the Department, the Tribunal vide its order dated 12.09.2008 restored the matter to the file of the Assessing Officer for deciding the same afresh. In the fresh assessment order passed by the Assessing Officer on 10.12.2009 under section 143(3)/254, the addition of Rs.11,68,929/- was again made by the Assessing Officer to the total income of the assessee on the ground that the said amount receivable from Simplex Infrastructures Limited as on 31.03.2005 was not disclosed by the assessee as current assets. The assessee again preferred an appeal against the said order of the Assessing Officer before the Id. CIT(Appeals), who confirmed the addition made by the Assessing Officer. On further appeal by the assessee, the Tribunal vide its order dated 10.09.2012 directed the Assessing Officer to verify as to whether the amount in question as reflected in the relevant TDS certificate for the period 01.04.2004 to 31.03.2005 had been offered to tax by the assessee and if it was found to be so offered, delete the addition made for the said amount. Accordingly, the Assessing Officer passed an order under section 143(3)/254 on 24.01.2004, wherein he again made an addition of Rs.11,68,929/- to the total income of the assessee. The assessee again went in appeal against the said order of the Assessing Officer before the Id. CIT(Appeals), who confirmed the addition of Rs.11,68,929/- made by the Assessing Officer to the total income of the assessee for the following reasons given in his impugned order:-

"I have carefully gone through the various orders passed by the AO, CIT(A) and the ITAT. The main issue is verification of the fact whether the amount of Rs.11,68,929/- has been offered by the assessee in the P&L Account in this AY 2005-06 or not. Although the AR says that this amount has been included in the P&L Account for AY 2005-06, the facts show it otherwise. The assessee follows the mercantile system of accounting, it is clear

from the assessment order dated 24.01.2014 (page 3) that the assessee had shown gross receipts of Rs.1,05,50,592/-. Break-up of the same is as under:-

<i>Gross receipt shown from Simplex Concrete Piles (India) Ltd. (as per TDS certificate of AY 2005-06)</i>	<i>Rs.1,02,91,760/-</i>	
<i>Add. Payment relating to FY 2003-04</i>	<i>Rs.14,27,754/-</i>	
<i>Less: Payment relating to FY 2004-05</i>	<i>Rs.11.68,920/-</i>	<i>Rs.2,58,825/-</i>
		<i>Rs.1,05,50,592/-</i>

Hence, it is very clear that the assessee had not offered the amount of Rs.11,68,920/- for taxation in the P&L Account in this AY which it was supposed to include in its gross receipt as per mercantile system of accounting. Hence, the addition of Rs.11,68,920/- is confirmed”.

Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

3. I have heard the arguments of both the sides and also perused the relevant material available on record. The Id. counsel for the assessee has reiterated before me that the amount of Rs.11,68,929/- in question was duly declared by the assessee as his income based on the TDS certificates issued by M/s. Simplex Infrastructures Limited and there was thus no understatement of any income. He has contended that the addition of the same amount again to the total income of the assessee has clearly resulted in the double addition, which is not permissible. It is, however, observed from the relevant portion of the Id. CIT(Appeals)'s impugned order that the amount of Rs.11,68,929/- pertaining to the year under consideration, which had been retained by M/s. Simplex Infrastructures Limited, was reduced by the assessee from the gross receipts shown as per the relevant TDS certificates while the amount of Rs.14,27,754/-

relating to the immediately preceding year as recovered in the year under consideration was added while declaring the gross receipts at Rs.1,05,50,592/-. Going by this practice, which is stated to be consistently followed by the assessee, it appears that the amount of Rs.11,68,920/- might have been included by the assessee in his gross receipts for the immediately succeeding year, i.e. A.Y. 2006-07 and if it is so, there is a case of double addition as rightly contended by the ld. counsel for the assessee. As contended by the ld. D.R., this aspect, however, requires verification by the Assessing Officer and since the ld. counsel for the assessee has also not raised any objection in this regard, I set aside the impugned order of the ld. CIT(Appeals) and restore the matter to the file of the Assessing Officer for the limited purpose of verifying as to whether the amount of Rs.11,68,920/- in question has been included by the assessee in his gross receipts for the immediately succeeding year, i.e. A.Y. 2006-07. It is found to be so declared for the A.Y. 2006-07, the Assessing Officer is directed to delete the addition of the same amount made in the year under consideration as the same would clearly amount to double addition.

4. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on February 03, 2017.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 3rd day of February, 2017

- Copies to :* (1) ***Shri Susanta Biswas,
Priyadarshini Apartment,
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Block-B, Flat No. GD, 111/A, Dum Dum Road,
Kolkata-700 074***
- (2) ***Income Tax Officer,
Ward-50(4), Kolkata,
Uttarapan Market Complex,
Kolkata-700 054***

- (3) Commissioner of Income Tax(Appeals)-15, Kolkata;*
- (4) Commissioner of Income Tax- ,*
- (5) The Departmental Representative*
- (6) Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.