

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.2158/Del./2016
Assessment Year 2011-2012

M/s. Subhash Chander & Co., New Delhi-110082. PAN AACFS6833P C/o. M/s. RRA TAX INDIA D-28, South Extension, Part-I, New Delhi-110049.	vs.,	The ACIT, Circle – 38 (1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Somil Agarwal, Advocate
For Revenue :	Ms. Rinku Singh, Sr. D.R.

Date of Hearing :	13.08.2019
Date of Pronouncement :	14.08.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-20, New Delhi, Dated 10.03.2016, for the A.Y. 2011-2012, challenging the addition of Rs.7,60,929/- on account of Sales Tax refund.

2. Briefly the facts of the case are that as per assessment order the status of the assessee is "Firm". The nature of business of assessee is Civil Contractor. The assessee filed return of income declaring income of Rs.26,04,046/-. The assessee filed information before A.O. for completion of the assessment. The assessee firm is engaged in business of Civil Contract with 05 partners having profit ratio of 20% each. The A.O. noted that assessee firm has received sales tax refund of Rs.7,60,929/- which has not been added to the income in the hands of the assessee firm. The assessee was required to explain why this amount should not be added to the income of assessee. The assessee firm explained that assessee firm M/s. Subhash Chander & CO was converted into "M/s. Subhash Infra Engineers Pvt. Ltd.," on 14.10.2009 and all the assets and liabilities including bank account of assessee firm transferred to the Private Limited Company. The sales tax number of assessee firm was converted into Private Limited Company and expenses including sales tax and relating to project/job work has been claimed by Private Limited

Company and in the same way sales tax refund was shown as income of the Private Limited Company. It was, therefore, submitted that same income cannot be taxed twice. The A.O. however noted that since the contract has been awarded to the assessee firm and sales tax had been deducted by the deductee at the time of payment of contract receipts to the assessee, therefore, refund of sales tax should be taxed in the hands of the assessee firm. The A.O. accordingly made the addition in the hands of the assessee firm. The Ld. CIT(A) also similarly noted that assessee firm is in receipt of sales tax refund on the contractual work it had undertaken. Since it is a statutory receipt, the assessee firm is liable to show it as income just like the income tax refund. The income has to be declared in the hands where it is to be taxed. This ground was accordingly dismissed.

3. After considering the rival submissions, we do not find any merit in the appeal of assessee. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that same amount have been shown as income in the hands of the Private Limited

Company, therefore, it would amount to double addition. Learned Counsel for the Assessee, however, admitted during the course of arguments that in assessment year under appeal in which sales tax refund have been received by the assessee firm, assessee firm continued its activities and exist. This fact is also corroborated by the fact that assessee firm has filed the return of income for assessment year under appeal on 20.09.2011 declaring income at Rs.26,04,046/-. It would mean assessee firm exist in assessment year in appeal. It is not in dispute that the contract had been awarded to the assessee firm on which sales tax had been deducted by the deductee at the time of payment of contract receipts to the assessee. Therefore, refund of sales tax shall have to be taxed in the hands of the assessee firm only. Since the assessee firm exist in assessment year under appeal and also declared business income in assessment year under appeal, there was no reason to show the impugned amount as income of Private Limited Company. It is well settled Law that income is to be taxed in the hands of person liable for taxation. Income is to

be assessed in the hands of right person, even if wrong person paid tax. We rely on Judgment of Hon'ble Supreme Court in the case of Ch. Atchiaiah's case 218 ITR 239 (SC). In this view of the mater, we do not find any justification to interfere with the Orders of the authorities below. This ground of appeal of assessee is dismissed.

4. In the result, appeal of Assessee dismissed.

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 14th August, 2019

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches : Delhi.