

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.894/Ind/2018
Assessment Year: 2012-13**

DCIT 3(1) Bhopal	बनाम/ Vs.	M/s. NIC Construction P. Ltd. 12, 3 rd Floor, City Centre Press Complex, M.P. Nagar, Zone-I Bhopal
(Appellant)		(Revenue)
P.A. No.AABCN9232D		

Appellant by	Shri Arun Jain, A.R.
Respondent by	Shri Ashish Porwal, D.R.
Date of Hearing:	07.01.2020
Date of Pronouncement:	22.01.2020

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the revenue is directed against order of the CIT(A)-2, Bhopal dated 14.9.2018 pertaining to the

assessment year 2012-13. The revenue has raised following grounds of appeal:

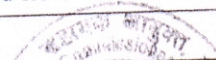
1. *On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.1,65,01,885/- on account of bogus sundry creditors by ignoring the fact that assessee had failed to furnish bank statements of creditors not only in assessment proceedings, but in remand report proceedings and in proceedings before CIT(A).*
2. *On the facts and circumstances of the case, the Ld. CIT(A), Bhopal has erred in stating that appellant was not in a position or in circumstances to furnish confirmations and bank statements by ignoring the settled principle of law that onus of proving the identity, genuineness and credit worthiness of sundry creditors and genuineness of its purchase is on the assessee.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) Bhopal has erred in deleting the addition of Rs.1,65,01,885/- on account of bogus sundry creditors without conducting an inquiry from bank w.r.t. genuineness of sundry creditors when there is absence of bank statements of creditors.*
4. *On the facts and circumstances of the case, the Ld. CIT(A) Bhopal has erred in accepting additional evidences under rule 46A, despite of the facts that assessee's case does not fall in any of the four circumstances mentioned in Rule 46A of the Income Tax Rules, 1962.*

2. Briefly stated facts are that in this case the assessee had filed a return of income on 29.9.2012 declaring total income at Rs.1,00,13,930/-. Subsequently, the case was selected for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as

‘the Act’) was framed vide order dated 13.3.2015, thereby the A.O. made addition of Rs.1,81,29,128/- in respect of unexplained creditors and disallowance out of diesel expenditure of Rs.7,92,727/-, out of repair and maintenance of Rs.5,85,165/-, out of loading and unloading expenses of Rs.1,11,572/- and out of disallowance of travelling expenses of Rs.22,805/-. Hence, the A.O. has assessed income at Rs.2,96,55,330/- against the returned income of Rs.1,13,930/-. The A.O. observed that the assessee had shown sundry creditors of Rs.3,25,89,759/-. To verify the sundry creditors, the A.O. issued notice u/s 133(6) of the Act. The A.O. in para 4 of his order observed as under:

“The details of the sundry creditors whose letters were received unserved/no information received is as under:

Name	Amount outstanding	Reason of disallowance
Shankar Singh	1297512	Letter returned back unserved and no confirmation provided by assessee
Friends Associates	3041345	Letter returned back unserved and no confirmation provided by assessee
Stage Infrastructure Pvt. Ltd.	2367151	Letter returned back unserved and no confirmation provided by assessee
Balwant Singh Binder	51280	Letter returned back unserved and no confirmation provided by assessee
Sahil Road Lines	1039977	Letter returned back unserved and no confirmation provided by assessee
Process Engineers	89080	Letter returned back unserved and no confirmation provided by assessee
Chouksey Building Material Supp.	158031	Letter returned back unserved and no confirmation provided by assessee
Rajpoot Sand Supplier	191348	Letter returned back unserved and no confirmation provided by assessee
Jasvinder Singh (JCB)	99742	Letter returned back unserved and no confirmation



		provided by assessee
Shekh Attel Saheb	105732	Letter returned back unserved and no confirmation provided by assessee
Santosh Vishwakarma (JCB)	496278	Letter returned back unserved and no confirmation provided by assessee
G.D. Ahuja	292906	Letter returned back unserved and no confirmation provided by assessee
Gangotri Stone Crusher	739832	Letter returned back unserved and no confirmation provided by assessee
Punjab Service Station	100000	As per information received from party balance is Rs.1,30,876/- whereas in the books of the assessee is Rs.2,30,875/- and hence, difference of Rs.1,00,000/- is added to total income
Aravali Crusher Pvt. Ltd.	38821	Reply not received, no confirmation provided by assessee
Gurbhag Kaur	191913	Reply not received, no confirmation provided by assessee
H.N. Parmar	773410	Reply not received, no confirmation provided by assessee
Jagdish Ahuja	811270	Reply not received, no confirmation provided by assessee
Jainawin Sales	261032	Reply not received, no confirmation provided by assessee
Mukesh Electric Centre	23823	Reply not received, no confirmation provided by assessee
Rajkumar Sharma	162032	Reply not received, no confirmation provided by assessee
Sainath Engineering Services	90988	Reply not received, no confirmation provided by assessee

S.D. Bansal Iron & Steel Pvt. Ltd.	502483	Reply not received, no confirmation provided by assessee
Sherock	2893310	Reply not received, no confirmation provided by assessee
S.K. Traders	802745	Reply not received, no confirmation provided by assessee
S. Rajinder Singh Bhinder	48680	Reply not received, no confirmation provided by assessee
S.S. Chouhan Stone Crusher	532095	Reply not received, no confirmation provided by assessee
S.S. Stone Crusher	599977	Reply not received, no confirmation provided by assessee
Aman Khan	22598	Reply not received, no confirmation provided by assessee
Shakti Earth Movers	303737	Reply not received, no confirmation provided by assessee
Total (Rs.)	1,81,29,128/-	

Vide order sheet entry dated 23.01.2015, the assessee was confronted with the facts and was asked to furnish the requisite details regarding these above mentioned sundry creditors. However, no confirmation or reasons for unserved/ no information received was submitted by the assessee. Again on 28.01.2015 letter dated 27.01.2015 filed by the assessee but no supporting documents / confirmations regarding sundry creditors provided. On 03.02.2015 again Shri Arun Jain (CA) confronted with this issue (regarding confirmation of sundry creditors) again on 09.02.2015 AR of the assessee Mr. Arun Jain confronted with same issue regarding not received / returned back unserved letters (for confirmation). Order sheet dated 23.02.2015 CA, Mr. Arun Jain again asked if he can provide anything more, On 12.03.2015 Mr. Arun Jain (AR) not produced anything more. It is very much clear that after giving many opportunities assessee was not able to substantiate genuineness of sundry creditors and not produced confirmations also. Since, no confirmation or other details regarding such sundry creditors has been submitted, the same is treated as non-genuine.



Any entry found credited in the books of accounts of the assessee, it is the responsibility of the assessee to substantiate the same with relevant documents, evidences etc. In the instant case, neither the information is received against the information nor the assessee could submit any details to prove the genuineness of such sundry creditors recorded in the books of accounts and hence, the same is added to the total income of the assessee. Thus, the addition of Rs. 1,81,29,128/- is made in the total income of the assessee. **Penalty u/s 271(1)(c) is initiated separately.**

3. Aggrieved against this addition assessee preferred appeal before Ld. CIT(A), who partly allowed the appeal of the assessee on this issue, thereby out of addition of Rs.1,81,29,128/-, he sustained addition of Rs.16,27,243/- and rest of the addition was deleted. Against this order, the revenue is in appeal. The grievance of the revenue in this appeal is twofold. Firstly, the Ld. CIT(A) accepted the additional evidences and secondly on the basis of these additional evidences deleted the addition. We find that Ld. CIT(A) partly deleted the addition by observing as under:

“5.8 The appellant has contended that it had filed confirmation with the A.O. vide letters dated 09.1.2015 and

23.01.2015 along with complete detail i.e. name, TIN, PAN, address, telephone no., copy of account of all creditors. However, in the assessment order the A.O. has mentioned that no confirmation was filed by the appellant during assessment. During appeal, the appellant filed details of sundry creditors furnished before the A.O. along with copies of confirmations in respect of all 30 creditors which have been added by the A.O. Subsequently, the appellant filed confirmation from 25 creditors having received payment of outstanding balance as on 31.03.2012 by cheque and bank statement showing transaction of payment in 4 cases and requested the same to be admitted u/R 46A of the Act.

5.9 As there was difference of factual position submitted by the A.O. and the assessment order with regard to submission of confirmation during assessment and the appellant had filed as additional evidence being confirmation from 28 creditors having receipt payment of outstanding balance as on 31.03.2012 by cheque, the matter was remanded to the A.O.

5.10 In this remand report dated 08.01.2018, the A.O. has reiterated that confirmations were not filed during assessment and that the additional evidence should not be admitted as the appellant had every opportunity to file confirmation during assessment. However, without prejudice to the request that additional evidence may not be admitted during appeal, the A.O. examined the additional evidence submitted during appeal. The relevant portion the remand report is reproduced below:

“9. However, without prejudice to the above, the comments on merits of additional evidences are as under:

10.1. In the assessment order, addition of Rs. 1,81,29,128/- was made on account of bogus sundry

creditors. As additional evidence, the assessee has submitted confirmation in respect of following creditors:

S.No.	Name	Amount Added in Assessment Order	Confirmation furnished by the assessee
1.	Aman Khan	22598	No
2.	Aravali Crusher Pvt. Ltd.	38821	No
3.	Balwant Singh Binder	51280	Yes
4.	Chouksey Building Material Supp.	158031	No
5.	Friends Associates	3041345	Yes
6.	G.D. Ahuja	292906	Yes
7.	Gangotri Stone Crusher	739832	Yes
8.	Gurbhag Kaur	191913	Yes
9.	H.N. Parmar	773410	Yes
10.	Jagdish Ahuja	811270	Yes
11.	Jainawin Sales	261032	Yes
12.	Jasvinder Sing (JCB)	99742	Yes
13.	Mukesh Electric Centre	23823	Yes
14.	Process Engineers	89080	Yes
15.	Punjab Service Station	100000	Yes
16.	Rajkumar Sharma	162032	Yes
17.	Rajpoot Sand Supplier	191348	Yes
18.	S. Rajinder Singh Bhinder	48680	Yes
19.	S.D. Bansal Iron & Steel Pvt. Ltd.	502483	Yes
20.	S.K. Traders	802745	Yes
21.	S.S. Chouhan Stone Crusher	532095	Yes
22.	S.S. Stone Crusher	599977	Yes
23.	Sahil Road Lines	1039977	No
24.	Sainath Engineering Services	90988	No
25.	Santosh Vishwakarma (JCB)	496278	No
26.	Shakti Earth Movers	303737	No, with a remark that payments has not been done till date because of some dispute

27.	Shankar Singh	1297512	Yes
28.	Shekh Attel Saheb	105732	Yes
29.	Sherock	2893310	Yes
30.	Stage Infrastructure Pvt. Ltd.	2367151	Yes
	Total	18129128	

10.2 On perusal of the confirmations, it is seen that all the creditors in respect of whom confirmations have been filed, have confirmed that the closing credit balance as on 31.03.2012 in the books of the assessee has been received by the creditors during subsequent years. The details of amount received along with cheques have been mentioned in the confirmations. Further, in respect of all the aforementioned creditors, the assessee has also furnished copies of his bank accounts from where payments were made to sundry creditors in subsequent year. Regarding the bank accounts of respective creditors, the assessee itself has expressed its inability to produce the same. Therefore, in view of above, decision may be taken accordingly as deemed fit.”

5.11 The remand report was forwarded to the appellant for submitting comments / rejoinder. In the rejoinder dated 26.02.2018, the appellant has again contended that all the confirmations were submitted during assessment, no details of unserved letters were provided by A.O. to the appellant and appellant was not confronted with the unserved letters. The appellant again submitted that fresh evidences being confirmation of receipt of payment should be accepted.

5.12 I have carefully considered the facts of the case, assessment order, remand report and the submissions of the appellant.

5.13 The fact whether the confirmations were submitted during appeal or not is disputed. The appellant has filed copies of letters through which it claims to have submitted such confirmations before A.O. during assessment. Even if the stand of the A.O. that the confirmations were not submitted during

assessment is accepted and all the evidences are treated as additional evidences, such evidences i.e. the confirmations of balance as on 31.03.2012 and confirmations having received payments subsequently have been duly examined by the A.O. during remand proceedings.

5.14 It is the duty of an appellate authority to consider all evidences which are necessary in arriving at a proper conclusion. Where there is reason for the assessee for not being able to present such evidence before the AO, it is considered not only fair but justified that the appellate authority considers such evidence as it may be necessary in deciding the issue. The settled law is that where there is omission to submit documents as required by the AO, the appellate authority may not be justified merely by drawing an adverse inference against the assessee in failing to furnish certain documentary evidences. Here in the present case, the additional evidence is nothing but confirmations of balance as on 31.03.2012 and confirmations having received payments. By very nature, the evidences cannot be said to have been created by the appellant subsequent to assessment. Even the A.O. has not raised any doubt regarding these additional evidences during remand proceedings. The evidences are relevant and crucial for deciding the appeal. I see no reason not to admit the additional evidence submitted by the appellant. Therefore, I am of the considered view that it is a fit case for admission of additional evidence. Hence, the additional evidences submitted by the appellant are admitted for deciding this appeal on merit and in the interest of justice.

Reliance is placed on following case laws:

Shahrukh Khan vs DCIT 13 SOT 61 (Mum)

ITO vs Dwarka Prasad 63 ITD 1(TM)(Patna)

Rachhpal Singh vs ITO 94 ITD 79 (Asr)



Electra Jaipur (P) Ltd. vs Inspecting Asstt. CIT 26 ITD 236(Del)
CIT vs K Ravindranathan Nair 265 ITR 217(Ker)
Prabhavati S. Shah vs CIT 231 ITR 1(Bom)
Manish Buildwell (Delhi High Court; order dated 20.11.2011)

5.15 After examination of evidences, the A.O. in the remand report has confirmed that “*On perusal of the confirmations, it is seen that all the creditors in respect of whom confirmations have been filed, have confirmed that the closing credit balance as on 31.03.2012 in the books of the assessee has been received by the creditors during subsequent years. The details of amount received along with cheques have been mentioned in the confirmations. Further, in respect of all the aforementioned creditors, the assessee has also furnished copies of his bank accounts from where payments were made to sundry creditors in subsequent year.*”

5.16 In view of the categorical finding of the A.O. in remand report that confirmations confirming the closing credit balance has been filed and having received outstanding amount subsequently is mentioned in the confirmations and bank account from where payments were made to sundry creditors has also been examined by the A.O., no addition can be sustained in respect of the creditors in whose case, confirmation has been filed by the appellant. The A.O. has not contended, and rightly so, in the remand report that addition can be made on the sole ground that letters issued were not served in some cases and were not replied by creditors in some other cases. These circumstances are not in control of appellant. The party may have shifted / may not be available etc. at the time of service of letter. The appellant has itself informed in some cases that party was not available at the old address. The A.O. has not made any further inquiry through Inspector etc. It is important to highlight that these are not a

cases where loans / deposits have been accepted by the appellant. These are only outstanding balances as at the end of the financial year in respect of purchases made during the year. All such purchases have been accepted by the A.O. and have not been doubted. Further the payments of these outstanding balances have been made in subsequent financial year by cheque in normal course. Therefore, there is no justification of any addition in respect of 23 sundry creditors out of 30 creditors in respect of whom, the A.O. has examined the confirmation.

5.17 In respect of M/s. Aman Khan, M/s. Aravali Crusher Pvt. Ltd. and M/s. Chouksey Building Material Suppliers, the appellant has informed before the A.O. and during appeal that the parties are not available/shifted office. However, copy of the relevant bill and copy of bank statement showing payments by cheque to them in the F.Y. 2012-13 has been filed which proves genuineness of these creditors as on 31.03.2012. No addition is justified in these cases also.

5.18 In respect of M/s. Shakti Earth Movers, the appellant has informed that payment of Rs. 3,03,737/- has not been made as there is some dispute with this party. The A.O. has also noted this fact in the remand report. However, confirmation of the party and copy of relevant bill has been filed. Therefore, no addition is called for in respect of this sundry creditor also.

5.19 However, in case of M/s Sahil Roadlines (Rs. 10,39,977/-), M/s Sainath Engineering Services (Rs. 90,988/-) and M/s Santosh Vishwakarma, JCB (Rs.4,96,278/-), the A.O. has reported in the remand report that no confirmation in these three cases has been furnished by the appellant. On perusal of submission filed during appeal, it is found that the

finding of A.O. is correct that confirmation, bill and copy of account has not been filed in respect of these three creditors. In absence of confirmation, bill and copy of account, the nature of the credit balance is not ascertainable. In these circumstances, these three balances cannot be treated as explained as the primary onus of proving the cash credit has not been discharged by the appellant. The aggregate amount of Rs. 16,27,243/- lying in these three names is found as unexplained and the addition is sustained u/s 68 of the Act.

5.20 In view of the above discussion, out of the addition of Rs.1,81,29,128/- made by the A.O., addition of Rs. 16,27,243/- is sustained u/s 68 of the Act and balance amount is deleted.

4. The above finding of fact is not rebutted by the revenue. Moreover, Ld. CIT(A) has categorically observed that the confirmation was also filed with the A.O. vide letter dated 9.1.2015. It is also transpired from the records that the Ld. CIT(A) had sought remand report from the A.O. in respect of additional evidences filed by the assessee. Therefore, it cannot be concluded that the confirmations were filed first time before the Ld. CIT(A) and no opportunity was granted to the A.O. for rebutting the same.

From the records, it is clear that the A.O. was given sufficient opportunity to rebut the evidences so filed. Under these facts, we see no reason to interfere with the finding of the Ld. CIT(A) and the same is hereby affirmed. The grounds raised by the revenue are dismissed.

5. In the result, the appeal filed by the revenue is dismissed.

Order was pronounced in the open court on 22.01.2020.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 22/01/2020
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore