

आयकर अपीलिय अधिकरण, “ए” न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL ‘A’ BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A. No.330/Chny/2018
निर्धारण वर्ष/Assessment Year:2013-14

M/s. Dolphin Infradevelopers Pvt. Ltd.,
No. 414, Bharathi Street,
Puducherry 605 001.
[PAN: AADCD1414F]

The Income Tax Officer,
Vs. Ward – 1,
Puducherry.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri S. Bharath, CIT
सुनवाई की तारीख/ Date of hearing : 09.12.2020
घोषणा की तारीख /Date of Pronouncement : 19.02.2021

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-Puducherry, Puducherry dated 27.10.2017 for the assessment year 2013-14. In the grounds of appeal, the assessee has challenged the confirmation of addition of ₹.29,68,60,543/- made under section 68 of the Income Tax Act, 1961 [“Act” in short].

2. The appeal filed by the assessee is delayed by 29 days, for which, the Id. Counsel for the assessee has filed a petition in support of an affidavit

for condonation of the delay, to which; the Id. DR has not raised any serious objection. Consequently, since the assessee was prevented by sufficient cause, the delay of 29 days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee filed its return of income for the assessment year 2013-14 on 01.11.2013 admitting a loss of ₹.23,632/-. The case was selected for scrutiny and notice under section 143(2) of the Act was issued and served on the assessee. On perusal of the return of income, the Assessing Officer observed that the assessee is a builder. However, no activities were carried out as a builder, but, the assessee deals only with the purchase and sale of stock-in-trade which was evident from the statement of account enclosed with the return. Further, on perusal of the financial statements, the assessee has shown ₹.37,97,24,872/- towards advances from customers under the head of other Current Liabilities. Under this, it was also found that the assessee has received new advances from customers during the year under consideration to an extent of ₹.29,68,60,543/-. Accordingly, notice under section 142(1)(b) of the Act was issued along with questionnaire asking for the details of persons, such as name and their address who remitted the advances. However, there was no response from the assessee. Since there was no response from the assessee to any of the notices issued

by the Department, notice under section 271(1)(b) of the Act was also issued and served on the assessee. In spite of levying the penalty also, the assessee neither appeared nor replied to the above notices. Thereafter, a show cause letter was issued to the assessee stating that why the new advances of ₹.29,68,60,543/- received during the year should not be made as addition due to absence of material evidences. Since the assessee did not turn up either in person or filed any reply to the notices issued and filed any material evidence, the Assessing Officer proceeded to conclude best judgement assessment under section 144 of the Act and the entire advances of ₹.29,68,60,543/- was brought to tax since the entire advance became doubtful and failed in proving the claim under the head 'advance from customers'. Further, in the return of income, the assessee debited a sum of ₹.6,46,390/- towards interest paid. The assessee has claimed the expenditure to the above advances under the head revenue expenditure and debited profit and loss account. Since the advances were shown as current liabilities and carried over to the succeeding years and there was no material evidence for its claim, the expenditure relating to interest payment was purely capital in nature and not in recurring nature, the same was brought to tax.

4. Against both the disallowances, the assessee preferred an appeal before the Id. CIT(A). Since there was no proper compliance from assessee's

side despite various opportunities were given, the Id. CIT(A) confirmed the additions.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessee was not given sufficient and effective opportunity and confirmation of high pitched assessment was unfair, unjust and unreasonable and prayed for giving one more opportunity of being heard to the assessee. On the other hand, the Id. DR strongly supported the orders of authorities below.

6. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. Since the assessee has not responded to notices issued under sections 143(2), 142(1)(b), 271(1)(b) of the Act and despite levying penalty due to non-compliances of the above notices, the Assessing Officer has rightly proceeded to conclude best judgement assessment under section 144 of the Act. During the course of appellate proceedings, the Id. CIT(A) posted the appeal for hearing on 19.06.2017, 19.07.2017, 20.09.2017 and final opportunity was given on 13.10.2017 to the assessee to submit all details such as when the advances were given, amount of fresh advance during the year, nature of advances, purpose of advances, details of payment, etc. However, the assessee has not furnished any of the above details called for. Based on the materials available

on record, the Id. CIT(A) concluded the appellate order by confirming the additions made by the Assessing Officer. Since the Id. Counsel for the assessee has prayed for one more opportunity of being heard to the assessee, we direct the Assessing Officer to give one more final opportunity of being heard to the assessee for filing complete details and if so, decide on merits. In case the assessee fails to furnish the details, the assessment already concluded under section 144 of the Act and confirmed by the Id. CIT(A) stands sustained.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 19th February, 2021 at Chennai.

Sd/-
(S JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURUL RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 19.02.2021

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.