

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &  
SHRI PRASHANT MAHARISHI, AM**

आयकरअपीलसं./ I.T.A. No.3176/Mum/2022  
(निर्धारणवर्ष / Assessment Year: 2014-15)

**M/s Sudarshan Nirman Co.**  
Ground Floor, Sudarshan  
Garden, Phase-1,  
Survey No.34/1A/2,  
Pitambare Village, Next to  
Military School Campus,  
Chichawali Road,  
Khadavli East- Thane 421605

बनाम/  
Vs.

**ITO**  
**Ward 3(5),**  
Thane,  
Mumbai

स्थायीलेखासं ./जीआइआरसं ./PAN No **ACAFS1676C**  
(अपीलार्थी/**Appellant**) : (प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओरसे/ **Appellant by** : Shri Vallabhdas D. Parmar  
प्रत्यर्थी की ओरसे/**Respondent by** : Ms. Deepika Arrora (Sr. AR)  
सुनवाई की तारीख/  
**Date of Hearing** : 27.03.2023  
घोषणा की तारीख/  
**Date of Pronouncement** : 20.06.2023

**आदेश / ORDER**

**Per Prashant Maharishi, Accountant Member:**

01. ITA No.3176/Mum/2022 is filed by M/s Sudarshan Nirman Co. [Assessee/ Appellant] for Assessment Year 2014-15 against the appellate order passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)" for short] dated 17/10/2022. By this appellate order, the appeal filed by the assessee against the assessment order dated

29/12/2016 passed by the Income Tax Officer, Ward-3(5), Thane [ the Id AO ]  
u/s 144 of the Income tax Act [ the Act] was dismissed.

02. The assessee aggrieved with that appellate order as preferred this appeal by  
raising the following grounds:

*"1. (i) On facts and circumstances of the case and in law Ld. CIT(A) erred in upholding ex-parte order passed by AO u/s 144 r.w.s 143(3) dated 29/12/2016 of the IT Act, 1961 which is bad in law as AO has passed order u/s 143(3) and also u/s 144 which is not permissible in law thus there is no application of mind by AO.*

*(ii) On facts and circumstances of the case and in law Ld. CIT(A) erred in upholding the assessment order passed u/s 143(3) r.w.s 144 dated 29/12/2016 as valid order without appreciating the fact that no mandatory show cause notice under first proviso to sec 144 is issued and served on assessee in respect of addition made y AO.*

*2. (i) On facts and circumstances of the case and in law Ld. CIT(A) erred in upholding addition made by AO of Rs.2,44,85,512/-which represents sundry creditors as on 31/03/2014.*

*(ii) On facts and circumstances of the case and in law Ld. CIT(A) erred in confirming addition of Rs.2,44,85,512/- us 68 of the IT Act 1961 without appreciating the fact that it does not represent loans or advances rather represents amount payable by assessee against purchases of land as per purchase agreement or other material purchased in course of business and relevant documents and evidences like purchases bills etc. were filed by assessee and part of such expenses are debited in P&L account and same is accepted by AO.*

*3. The Appellant craves to consider each of the above grounds of appeal without prejudice to each other and*

*craves leave to add, alter, delete or modify all or any of the above grounds of appeal."*

03. The brief facts of the case are that the assessee is a partnership firm carrying on the business of builders and developers, filed its return of income on 27/09/2011 at a total income of Rs.3,10,736/-. This return was processed and taken up for scrutiny under limited scrutiny and the reason of scrutiny was large investment in property and large increase in sundry creditors, received the notice u/s 143(2) of the Act. The assessee submitted the details of the purchasers etc. and of the sundry creditors. As assessee could not furnish confirmation and permanent account numbers of the parties as same was not available at that time. In absence of any such evidence, the sundry creditors amounting to Rs.2,44,85,512/- were added to the total income and consequently assessment order u/s 144 r.w.s 143(3) of the Act was passed on 29/12/2016 determining the total income at Rs.2,47,96,252/-.
04. Aggrieved, assessee filed an appeal before the Ld. CIT (A). Before the Ld. CIT(A), the assessee challenged the order passed u/s 144 r.w.s 143(3) of the Act as bad in law and further on merits the addition made of Rs. 2,44,85,512/- was contested. The main contention of the assessee is that out of Rs.2,44,85,512/- of sundry creditors, sum of Rs. 2,31,65,707/- are the persons to whom such sum is payable on account of purchase of land at Panvel. Assessee filed relevant agreement for purchase of land, where name, address and election card identification of those parties is available. It was submitted that assessee has purchased land during the year for consideration of

Rs.2,96,75,707/- from nine different parties. To these parties Rs.65,10,000/- was paid and balance sum of Rs.2,31,65,707/- is outstanding. The amount is outstanding because of the reason that assessee purchased an agricultural land, which was to be converted into non-agriculture land, and NOC etc were awaited. Therefore, the balance sum was outstanding. With respect to the balance amount, it was stated that these outstanding are for the purchase/ expenses incurred during the year. Assessee submitted their name and nature of outstanding. During the course of hearing before the Ld. CIT (A), assessee filed additional evidences such as ledger account of the parties, copies of their bills and bank statement showing payment to the parties subsequently. The Ld. CIT (A) examined all the details. The remand report was called from the Assessing Officer, which was submitted on 23/03/2018. In remand proceedings, The Ld. AO issued enquiry letters u/s 133 (6) of the Act out, only five parties amounting to Rs.2,31,65,707/-, from whom land was purchased, did not respond. With respect to thirteen other parties, reply was received from 11 parties where in parties amounting to Rs. 11,81,755/- confirmed the transactions. Only two carpenters did not respond to 133 (6) notices. The appellant was asked to file rejoinder. After considering all the submissions, remand report and rejoinder of the Assessee, Ld. CIT(A) confirmed the addition u/s 68 of Rs.2,44,85,512/- for reason that before the Assessing Officer, assessee was asked to produce the sundry creditors along with copies of bill etc. but same were not produced. The Id CIT (A) even did not delete the addition of sundry creditors who confirmed the transaction u/s 133 (6) and Id AO did not

have any other adverse remark in remand proceedings on those parties amounting to Rs 11,81,755/-. Accordingly, the appeal of the assessee was dismissed. Therefore, the assessee aggrieved and is in appeal before us.

05. The Ld. AR submitted detailed written submission on the issue. He also relied upon several judicial precedents. The main argument was that failure of parties to respond u/s 133 (6) of the Act cannot be a ground for making such addition, when the assessee furnished the copies of documents with respect to parties from whom land is purchased, while registering those documents all the parties who sold the properties to the assessee, were present and their photograph were taken along with photocopies of their election card before registering authority, therefore the identity of those parties is clearly established. Even otherwise, the purchase of land is recorded in the books of account of assessee and same is not disputed with respect to price of land and amount payable to each of the parties. Therefore, mere non-production of those parties could not result in the addition. With respect to the balance parties, he referred to the order of the Ld. CIT(A) wherein it is evident that out of the other creditors confirmation has already received from parties amounting to Rs.11,81,755/-. Only with respect to the two carpenters confirmation are not received. Payment to those parties are of Rs.46,565/- and Rs.19,493/-. It was submitted that parties are small time labour, they reside in small town, payment is made in subsequent year by cheque, and amounts are debited to fixed assets on which depreciation is allowed by the Id AO. These two payments

are not claimed as deduction. In view of this, the addition has been wrongly confirmed by the Ld. CIT(A).

06. The Ld. DR vehemently supported the order of the Lower Authorities.
07. We have carefully considered the rival contentions and perused the order of the Lower Authorities. We find that on 16<sup>th</sup> September, 2013 a sale deed of agricultural land situated at Panvel, Raigarh was entered in to for purchase of land by assessee at total consideration of Rs.2,96,75,707/- from nine different parties. All those parties are agriculturist residing at Panvel, Raigardh. As the assessee is builder and agricultural land is required to be converted into non agriculture land. Part of the payment was made to the parties. A total amount of Rs.40,10,000/- was paid at the time of the sale agreement and balance sum of Rs.2,96,75,707/- was to be paid a later on at the time of sale deed. There were documents extracts articles and statement etc. were to be handed over by the sellers to the assessee at the time of execution of deed. In the agreement to sale , all sellers have put their thumb impressions, on their photograph, identified themselves by producing their identity cards and also appeared before the sub registrar. The village form No.7 categorically shows that all the sellers are owner of the land. All the sellers have confirmed in person before the Sub-Registrar-2, Panvel on 16 September 2013 personally about the fact of sale of land and agreed consideration. Assessee has also submitted a detailed chart of all the sellers when the sum are paid to them subsequently. Out of the above sum, still Rs. 92 lacs are outstanding. It is not the case of the Id AO that those parties have not sold the land to the assessee or assessee has

already paid the sum to them. The Amount outstanding against their names is treated as Bogus. No doubt, the AO has issued enquiry letter u/s 133(6) to them but they have not replied. However, that cannot result into an addition in the hands of the assessee in view of overwhelming evidences of purchase of property. Thus, when parties are identified, transaction of purchase of land is accepted, reason for outstanding amount is explained, consideration of land is not in doubt, no evidences that parties have been paid from undisclosed sources, addition of outstanding amount treating it as bogus sundry creditors cannot be made. Accordingly, we do not find any reason to sustain the order of the Lower Authorities with respect to the outstanding of Rs.2,31,65,707/-. Accordingly, the addition to them to extent that purchase of land is deleted.

08. Second addition is with respect creditors of Rs.13,19,805/- for various services and purchases. In the remand proceedings, the creditors worth Rs.11,81,755/- have submitted their confirmation as well as ledger account in response to notice u/s 133 (6) of the Act. Despite these facts, the Id CIT (A) did not delete the addition for the reason that assessee failed to produce them before Id AO in assessment proceedings. We find that when the parties have confirmed the transaction on direct enquiry by the Id. AO, there is no reason to sustain the addition at least to the extent of Rs.11,81,755/- out of Rs.13,19,805/-. It is not always, generally, necessary that creditors should always remain present in the assessment of debtors. Of course, if the transaction are unusual, alarming and there are evidences that those creditors are bogus, situation may be different. Here in this case, no such abnormal circumstance are shown.

Accordingly, we direct the Ld. AO to delete the addition of Rs.11,81,755/-. With respect to the balance sum of Rs.1,38,580/-, the Ld. AO has made the addition of sums are to be paid to the two carpenters. Naturally the nature of payment and the quantum is so small that non-receipt of confirmation from them u/s 133 (6) of the Act cannot result in addition. It is further shown that these expenses are not debited to the Profit and Loss account but are added to the fixed assets on which depreciation is claimed and allowed. This fact is not controverted by Revenue, therefore, the addition of Rs.1,38,580/- also deserves to be deleted. Accordingly, ground No.2 of the appeal is allowed.

09. In view of our finding in Ground No.2 of the appeal, ground No.1 of the appeal become infructuous and, therefore, dismissed.
10. In the result, the appeal of the assessee is partly allowed.

Orders pronounced in the open court 20<sup>th</sup> June, 2023.

Sd/-  
**(Amit Shukla)**  
**Judicial Member**

Sd/-  
**(Prashant Maharishi)**  
**Accountant Member**

मुंबई Mumbai; दिनांक Dated 20.06.2023

PK/sps

आदेशकी प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT- concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

*I.T.A. No. 3176/Mum/2022*  
*M/s Sudarshan Nirman Co. vs. ITO*

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai