

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.59/RPR/2024

निर्धारण वर्ष / Assessment Year : 2015-16

Dolphin Promoters & Builders  
A-1, Near Sai Mandir, Devendra Nagar Road,  
Sai Nagar, Raipur (C.G.)-492 001 (C.G.)  
PAN: AAefd2588E

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer-3(4),  
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 08.07.2024

घोषणा की तारीख / Date of Pronouncement : 22.08.2024

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the assessee firm is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 11.09.2023, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 13.11.2017 for the assessment year 2015-16. The assessee firm has assailed the impugned order on the following grounds of appeal:

- "1. On the facts and circumstances of the case and in law, Id.CIT(A) had erred in sustaining the addition of Rs.1,05,02,811 on count of bogus creditors, which is unjustified and is liable to be deleted.
2. The appellant craves leave to add, urge, alter, modify or withdraw any grounds before or at the time of hearing."

2. Shri Sunil Agrawal, Ld. Authorized Representative (for short 'AR') for assessee has put upon appearance along with Mr. Harmit Singh Bora, partner of the assessee firm. Elaborating on the reason leading to delay of 106 days involved in filing of the present appeal, the learned AR has drawn our attention to the "affidavits" filed by the partners of the Assessee Firm. The learned AR stated that though the assessee firm had specifically stated in Form No. 35 that all notices/communications be sent in a mode otherwise through email but, till date, no physical/hard copy of the

impugned order of the CIT (A) had been received. The learned AR to fortify his contention has taken us through Form No. 35, which revealed that the assessee firm had opted for receiving all notices/communications otherwise than through email.

3. Per contra, Shri Satya Prakash Sharma, Ld. Senior Departmental Representative (for short, 'Sr.DR') objected to the request for condonation of delay. It was submitted by him that as the delay involved in filing the appeal was inordinate, therefore, the same does not merit to be condoned.

4. We have heard the learned authorized representatives of both the parties qua the issue of delay involved in filing the present appeal. Ostensibly, a perusal of Form No. 35 reveals that the assessee firm had opted out of service of notices/communications through email. For the sake of clarity, the relevant extract of Form No. 35 is culled out as under:

FORM NO. 35 [ See rule 45 ] Appeal to the Commissioner of Income-tax (Appeals)			CIT(A)	Acknowledgement Number 33064384111217	
Personal Information	First Name	Middle Name	Last Name or Name of Entity	PAN	TAN (if available)
			DOLPHIN PROMOTERS AND BUILDERS	AAEFD2588E	
	Flat/ Door/ Block No.	Name of Premises / Building / Village		Road / Street / Post Office	
	NEAR SAIMANDIR SAIN AGAR				
	Area/ Locality	Town/ City/ District		State	Country
	DEVENDRA NAGAR	RAIPUR		CHHATISHGARH	INDIA
	Pincode	Mobile No	STD/ISD Code-Phone No	Email Address	Whether notices/ communication may be sent on email?
492001	-9827125004		kpl2002@gmail.com	No	

5. Although, the assessee firm had specifically stated that all the notices/communications be sent otherwise through email but no physical/hard copy of the order of the CIT(A) had been served upon the assessee firm. The Ld. AR stated that it was only when the assessee firm had logged into its e-portal account and gathered about the disposal of its appeal for AY 2018-19 on 29.12.2023 by the CIT(A), it was only pursuant thereto it had come to its notice that its appeal for AY 2015-16 had been disposed of by the CIT(A).

6. Admittedly, as the Department has failed to serve upon the assessee, a hard copy of the impugned order, therefore, we find no justification in reckoning the period of limitation from the date on which the impugned order is stated to have been dropped in its email account. As the assessee states that the impugned order of the CIT(A) had come to its notice on 29.12.2023 (supra), therefore, in all fairness, the period of limitation has to be reckoned from the said date. As the present appeal has been filed by the Assessee Firm on 24.02.2024 i.e. within the stipulated time period of 60 days from the aforesaid date, i.e. 29.12.2023, therefore, the same can safely be held to have been filed within the prescribed time.

7. We, thus, in terms of our aforesaid observations, condone the impugned delay of 106 days (as pointed out by the registry) in filing of the present appeal by the assessee Firm.

8. Succinctly stated, the assessee firm had e-filed its return of income for A.Y.2015-16 on 11.03.2016, declaring an income of Rs. Nil. Subsequently, the case of the assessee firm was selected for "limited scrutiny" u/s.143(2) of the Act.

9. During the course of the assessment proceedings, it was observed by the A.O that the assessee firm had in its "balance sheet" for the subject year shown total 24 sundry creditors at Rs.3,23,70,788.59. The A.O directed the assessee firm to furnish confirmations and addresses of all the creditors of more than Rs.1 lac. However, the assessee vide its reply dated 18.10.2017 placed on record the addresses of only 9 creditors. The A.O in order to verify the genuineness of the said 9 creditors whose addresses were provided by the assessee issued to them notices u/s. 133(6) of the Act, as under:

Sl. No.	Name of creditors	Amount (Rs.)
01.	Gulati Sales	211200
02.	Impressive Homes	2389623
03.	Mahaveer Marble	1397184
04.	Nakoda Associates	6890385
05.	New Lucky Loadlines	56174
06.	Rajendra Enterprises	237493
07.	R.D. Sons	119544

08.	S.K.M. Concrete	18081170
09.	Steel Sales Account(s)	1462623

In cases of two parties, viz. (i) Gulati Sales (Sr. No.01); and (ii) New Lucky Roadlines (Sr. No.05), notices were returned by the postal authority. One creditor, viz. R.D. Sons (Sr. No.7) furnished its reply and stated to have received full payment of Rs.25,55,891/- from the assessee firm, while for, the latter was shown by the assessee firm as a creditor for Rs.1,19,544/-. The assessee firm on being confronted with the aforesaid discrepancies, failed to come forth with any explanation. At the same time, the confirmations of three parties, viz. (i) S.K.M Concrete (Sr. No.8); (ii) M/s. Mahavir Marble (Sr. No.03); and (iii) M/s. Impressive Homes (Sr. No.2) were received by the A.O wherein they had confirmed the balances as were shown by the assessee firm. In all the remaining cases no replies were received by the A.O.

10. The A.O brought the aforesaid facts to the knowledge of the assessee firm which however, expressed its inability to furnish any further details. Accordingly, the A.O called upon the assessee firm to explain as to why the aforementioned unconfirmed creditors may not be held as unexplained cash credits u/s.68 of the Act. In reply, the assessee stated that he had no further submissions to make in the said matter. The A.O considering the

fact that the assessee firm despite having been provided sufficient opportunity had failed to furnish the detail addresses and confirmations of the remaining creditors, held the remaining 21 creditors aggregating to Rs.1,05,02,811/- as bogus and made addition to the said extent in its hands.

11. Aggrieved the assessee firm carried the matter in appeal before the CIT(Appeals) but without success. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

"6. Decision

6.1 I have carefully considered the grounds of appeal, the statement of facts and the details mentioned in the assessment order. Assessee has not submitted any written submission or documentary evidence during the appellate proceedings in spite giving various opportunities. Therefore, the appeal is disposed on the material available on records.

6.2 Grounds no. 1 and 3 are general in nature and do not need any separate adjudication. Ground No. 2 is against the addition of Rs.1,05,02,811/- on account of bogus creditors. As seen from the details mentioned paras 4.1 to 4.7 above, the appellant had shown outstanding sundry creditors for a total amount of Rs.3,23,70,788/- These amounts were shown credited from 24 parties, as per the table reproduced by the AO at Para 3 of the impugned order. The appellant failed to file confirmations from any of the parties. The appellant even failed to furnish the addresses of the creditors, except in 9 cases. Notices u/s 133(6) were issued to these 9 parties. Only 4 parties responded, out of which only 3 confirmed the balances shown outstanding by the appellant. One party claimed to have received back all payment. The appellant failed to explain this discrepancy. Thus, out of 24 parties, only in 3 cases can the appellant be held to have discharged its onus of proving the creditworthiness of the sundry creditors. In the remaining 21 cases, the appellant has failed to discharge even the initial onus cast upon it by the provisions of section 68. The appellant has failed to provide any evidence/details even during the appeal proceedings, despite being given numerous

opportunities. In view of the above, I hereby hold that the appellant has failed to discharge the onus of proving the creditworthiness and genuineness of the credit entries totalling Rs.1,05,02,811/- and the amount has been correctly added by the AO to the total income of the appellant. Ground No. 2 is hereby dismissed.

6.3 Grounds No. 4 and 5 are against levy of interest u/s 3 24A and 234B. Levy of interest is consequential and no appeal lies against such levy. Grounds no. 4 and 5 are dismissed. Ground no. 6 is against initiation of penalty proceedings. No appeal lies against initiation of penalty proceedings and ground no. 6 is dismissed. Ground no. 7 is general in nature and does not require any separate adjudication.

7. To conclude, all the grounds of appeal are dismissed and the appeal is hereby treated as dismissed."

12. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

13. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record.

14. Shri Sunil Kumar Agrawal, Ld. AR for the assessee firm had filed a letter dated 22.04.2024 seeking liberty to place on record certain documents running into 52 pages as additional evidence under 29 of the Income Tax (Appellate Tribunal Rules), 1963. The assessee firm in its application had not given any reason as to why the documents sought to be placed on record were not filed before the AO. On the contrary, we find that the AO had given sufficient opportunity to the assessee to place on record documentary evidence to substantiate the authenticity of the credit

balances appearing in its books of account which, however, it had failed to avail. As there is no reason given by the assessee/appellant as to why the aforementioned documents could not be filed before the AO, therefore, we have no hesitation in declining its request for admission of the same as additional evidence. Accordingly, the application filed by the assessee seeking liberty to place on record additional evidence is rejected.

15. The Ld.AR for the assessee firm submitted that both the lower authorities had grossly erred in treating the creditors as bogus and making a consequential addition of Rs.1,05,02,811/- (supra). The Ld. AR on being queried as to whether confirmations of either of the aforementioned parties were available, answered in negative. The Ld. AR submitted that as the purchases in the case of one party, viz. M/s. Nakoda Associates (Sr. No.13), had been accepted by the department as genuine, therefore, there was no justification for the A.O to have held the said party from whom the said goods were purchased as bogus. The Ld. AR had failed to come forth with any contention regarding the remaining parties.

16. Per contra, the Ld. DR relied on the orders of the lower authorities. It was submitted by him that as the assessee firm had failed to substantiate the authenticity of the creditors based on supporting documentary evidence, i.e. confirmations etc., therefore, the lower authorities had rightly held the same as bogus creditors.

17. Controversy involved in the present appeal lies in a narrow compass, i.e. sustainability of the view taken by the lower authorities who had held the credits disclosed by the assessee against 21 parties as bogus and made a consequential addition of Rs.1.05 crore (approx.).

18. Admittedly, it is a matter of fact borne from record that the assessee despite specific directions of the A.O had failed to substantiate the authenticity of the aforesaid credits disclosed against the names of the aforementioned parties by placing on record their confirmations. Ostensibly, a perusal of the assessment record, reveals that not only the assessee firm had failed to avail the sufficient opportunity that was afforded to it to substantiate the genuineness of the aforesaid creditors but also had stated before the A.O that it had nothing more to submit in the matter (Para-5 of A.O.).

19. Before proceeding any further, we think it apt to cull out the provisions of Section 68 of the Act, which reads as under:

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

**Provided** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

**Provided further** that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10."

The assessee as per the aforesaid statutory provision remains under an obligation to substantiate both the "nature" and "source" of the credits appearing in its books of account. Accordingly, the assessee firm remained under an obligation to substantiate the authenticity/genuineness of the sundry creditors (21 parties) of Rs.1.05 crore (approx.), which we find it had failed to do by placing on record supporting documentary evidence despite having been afforded sufficient opportunities.

20. As regards the claim of the Ld. AR that purchases made by the assessee firm from one party, viz. M/s. Nakoda Associates (Sr. No.13) had been accepted by the A.O as genuine, therefore, no adverse inferences as regards the authenticity of the said creditor could have been drawn, we are unable to persuade ourselves to subscribe to the same. We, say so, for the reason that though the purchases made by the assessee firm from M/s. Nakoda Associates (supra) had been accepted by the A.O, the same would not exonerate the assessee firm from the obligation that was cast upon it to substantiate the genuineness of the credit appearing in its "balance

sheet" in the name of the said party. Even if the assessee had made purchases from the aforementioned party, in absence of any supporting material it cannot be concluded that the liability corresponding to the said purchases was outstanding in the "balance sheet" as on the date of closure of the subject year, i.e. 31.03.2015. The factual position that the liabilities in question are genuine and outstanding in the "balance sheet" as on 31.03.2015 can only be gathered, based on the documentary evidence, which the assessee firm ought to have produced in the course of the assessment proceedings. However, we find that the assessee firm even before us had failed to lead any evidence/material which would support the authenticity of the aforesaid creditors. Our aforesaid view is fortified by the fact that in case of one of the creditor, viz. M/s. R D Sons (Sr. No.7), the assessee had shown an outstanding liability as on 31.03.2015 of Rs.1,19,544/-, while for, the said party in its confirmation had stated that it had received full payment of Rs.25,55,891/- from the assessee firm. Accordingly, the fact that the assessee had paid the amount of Rs.1,19,544/- (supra) from his undisclosed sources stands established. We, thus, are of a firm conviction that in absence of any confirmation of M/s. Nakoda Associates (supra), the fact that the assessee firm might have discharged its outstanding liability towards the said party from its undisclosed sources cannot be ruled out. Rather, the fact that the assessee firm till date, i.e. even after a lapse of 7 years from the end of the

subject year, i.e. A.Y 2015-16, not placed on record confirmations of any of the aforementioned 21 parties fortifies our doubts as regards the genuineness of the 21 creditors disclosed as outstanding by the assessee firm as on 31.03.2015 in its "balance sheet" at Rs.1.05 crore (supra).

21. We, thus, finding no infirmity in the view taken by the CIT(Appeals) who had rightly sustained the addition of Rs.1.05 crore (supra) made by the A.O u/s. 68 of the Act treating the same as bogus, uphold the same.

22. In the result, the appeal of the assessee firm is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 22nd day of August, 2024.

Sd/-

**ARUN KHODPIA**  
**(ACCOUNTANT MEMBER)**

Sd/-

**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 22nd August, 2024.

\*\*\*\*\*SB, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.