

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. 60/RPR/2024  
निर्धारण वर्ष / Assessment Year : 2018-19

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

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-1(1), Raipur

.....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 29.12.2023, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s.144B of the Income-tax Act, 1961 (in short 'the Act') dated 23.04.2021 for the assessment year 2018-19. 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, ld CIT(A) has erred in sustaining the addition of Rs.94,85,032 on the count of income estimated on adhoc basis @10% on 'advance from customers' of Rs.9,48,50,325 as on 31-3-18 as appearing in the balance sheet as on 31-3-18, which is unjustified and is liable to be deleted.

2. On the facts and circumstances of the case and in law, ld CIT(A) has erred in sustaining the addition of Rs.3,67,086 on the count of 'unexplained creditors' u/s.68, which is unjustified and is liable to be deleted.

3. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing."

2. Succinctly stated, the assessee firm which is engaged in the business of construction and development of commercial/residential buildings and real estate business had filed its return of income for A.Y.2018-19 on 31.12.2018. Thereafter, the case of the assessee firm was selected for scrutiny assessment u/s. 143(2) of the Act.

3. During the course of assessment proceedings, the A.O observed that the assessee firm which was engaged in construction contracts with the purchasers of flats/development of plot had in its balance sheet as of 31.03.2018 stated to be in receipt of "advance" of Rs.9,48,50,325/- from customers. The A.O was of the view that the aforementioned amounts received by the assessee firm were in lieu of work done and not "advance". The A.O observed that as per accounting standards of ICAI, the assessee firm was required to apply AS-7, i.e. "% completion method" and determine profit in every year instead of deferring it to the accounting year, in which final sale would take place. As such, the A.O was of a firm conviction that profit element was embedded in the receipt of Rs.9.48 crore (approx.) that was disclosed by the assessee firm in its "balance sheet" for the subject year as "advances" from customers. Accordingly, the A.O estimated the profit element embedded in the aforementioned receipts of Rs.9.48 crore @10% and worked out an addition towards business income for the subject year at Rs.94,85,032/-. Also, the A.O observed that the assessee firm had despite specific directions failed to place on record confirmations of 14 creditors as were disclosed in its "balance sheet" for the subject year aggregating to Rs.3,67,084/-, as under:

Sr. No.	Name	Amount ( Rs.)
1	Abhay Athwani	86520
2	Amesar & Associates	8736
3	Baaj House Keeping	18474
4	J.J Patel Agency	346
5	J.K Bricks	95501
6	Namo Shree Infracon, Raipur	143350
7.	Sahadeev Glass & Aluminum	11613
8.	S.M Shop	2446
<b>Total</b>		<b>367086/-</b>

Accordingly, the A.O observing that the assessee firm had failed to discharge the onus that was cast upon it, thus, held the amount of Rs.3,67,086/- as unexplained credit u/s. 68 of the Act.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). As the assessee firm despite having been afforded sufficient opportunity had failed to participate in the proceedings before the first appellate authority, therefore, the latter was constrained to dismiss the appeal vide an ex-parte order. 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. Grounds no. 1 and 9 are general in nature and do not require separate adjudication.

6.2 Ground No. 2 is against the addition of Rs. 98,52,118/- (the correct figure is 94,85,032), by treating 10% of the total outstanding advances received from customers as on 31/3/2018 as business income. The facts are discussed at Para 4.1 above. The AO noted that the appellant had entered into construction contracts with the purchasers of flats and that the payment received by the appellant is payment for work done and not 'advance' and profit element is embedded in these receipts. The AO held that as per the accounting standards of ICAI, the appellant was required to apply AS-7, i.e. '% completion method' and determine profit every year instead of deferring it to the accounting year in which final sale would take place. Some of the reasons given by the AO for applying AS-7 are reproduced below:

1. The assessee receives periodic payments from customers, against specific flats/land plot booked in their names and agrees to complete the project within a time frame. The money received from the prospective customers is being utilized in the construction/development of projects. Thus a contractual relationship is created between the purchaser and builder/developer, whereby the contractee i.e. purchaser has the right towards performance of contract and the contractor builder has the right to receive progressive payment as the construction progresses.
2. The life span of the projects spreads over more than one financial year, which means it is a long term contract between the purchaser and the builder. In such long term projects, the contractee as well as contractor obtains legally enforceable rights under the contract.
3. The A.O. relied upon the principle laid down by the Hon'ble Supreme Court in the case of P.M. Mohd. Meera Khan (1969) 73 ITR 735 and in the case of Tirtha Ram Ahuja (P) Ltd. 186 ITR 248.
4. The A.O. noticed from the record that advances have been received as long back as in 2005, construction of most of the projects has been completed and customers have paid maximum amounts against the purchases.

The AO therefore brought to tax 10% of the 'amount received from customers' reflected in the Balance Sheet as on 31/3/2018 at Rs.9,48,50,325/-

6.3 The appellant has failed to file any details during the appeal stage to state as to why the stand taken by the AO is not correct. In view of the same, there is no option but to uphold the stand taken by the AO that the income should be brought to tax as per the percentage completion method. Thus the addition of Rs. 94,85,032/- is hereby upheld. Ground no. 2 is dismissed.

6.4 Ground no. 3 is against the addition of Rs.3,67,086/- u/s 68. The addition was made out of sundry creditors in connection with parties whose confirmations were not submitted by the appellant. Confirmations have not even been furnished at the appeal stage. Thus, the appellant has failed to discharge even the primary onus cast upon it u/s 68 in respect of outstanding creditors to the tune of Rs.3,67,086/- The addition u/s 68 of Rs. 3,67,086/- is hereby upheld and ground no. 3 is dismissed.

6.5 Grounds no. 5 and 6 are against levy of interest u/s 234A and 234B. These grounds are dismissed as levy of interest is consequential in nature. Grounds no.7 and 8 are against initiation of penalty and are dismissed as no appeal lies against initiation of penalty.

7. In the result, the appeal is hereby dismissed."

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

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

7. Shri Sunil Kumar Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee at the threshold submitted that though the assessee

firm in the memorandum of appeal filed before the CIT(Appeals) in Form 35 had specifically opted out of receipt of notices/communication from his office through email but despite that no hard/physical copy of any notice intimating fixation of appeal was ever served upon the assessee firm. The Ld. AR to fortify his claim had taken us through the Form 35 wherein it had categorically stated that all notices/communications be sent otherwise than through email. The Ld. AR to support his contention had drawn our attention to the CIT(Appeals)'s order which revealed that all the notices intimating fixation of appeal on all five occasions, i.e. on 01.04.2022, 10.05.2022, 07.06.2022, 11.07.2023 and 14.09.2023 were dropped at the email address of the assessee firm. It was, thus, averred by the Ld. AR that as the assessee firm for no fault on its part had remained divested of an opportunity to put forth its case before the CIT(Appeals), therefore, the matter in all fairness be restored to his file with a direction to decide the appeal afresh.

8. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

9. We have thoughtfully considered the aforesaid issue in the backdrop of the contentions of the Ld. authorized representatives of both the parties. Admittedly, it is a matter of fact borne from the record that the assessee firm in Form No.35 had specifically opted out of service of

notices/communications through email. For the sake of clarity, the relevant extract of the Form 35 is culled out as under:

FORM NO. 35 [ See rule 45 ] Appeal to the Commissioner of Income-tax (Appeals)			CIT(A)		Acknowledgement Number	
					354754471180521	
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 AGARDEVENDRA NAGAR ROAD					
	Area/ Locality	Town/ City/ District		State	Country	
		RAIPUR		CHHATISHGARH	INDIA	
	Pincode	Mobile No	STD/ISD Code-Phone No	Email Address	Whether notices/ communication may be sent on email?	
492001	91 - 9827125004		horakamaljeet@hotmail.com	No		

Although, the assessee firm had opted out of service of all notices/communications through email, we find that on all the five occasions when the appeal was fixed for hearing before the CIT(Appeals), notices were allegedly served through ITBA/email. We find substance in the claim of the Ld. AR that the assessee firm for no fault on its part had remained divested of an opportunity for putting up its case in the course of the proceedings before the first appellate authority. We are of the view that now when the assessee firm had specifically opted out from service of notices/communications from the office of the CIT(Appeals) through email, therefore, there was no justification on the latter's part to have allegedly served the notices intimating fixation of the appeal through ITBA/email. As failure on the part of the assessee firm to participate in the proceedings before the first appellate authority had occasioned for no fault on its part,

but for the lapse on the part of the office of the CIT(Appeals) in validly putting it to notice, therefore, in our view, the summarily dismissal of the appeal at its back is in violation of the principles of natural justice. Accordingly, we are of a firm conviction that the matter in all fairness requires to be restored to the file of the CIT(Appeals) with a specific direction to re-adjudicate the same. Needless to say, the CIT(Appeals) shall in the course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee firm which shall remain at a liberty to substantiate its case on the basis of fresh documentary evidence, if any. Thus, the **Grounds of appeal No.1 & 2** raised by the assessee firm are allowed for statistical purposes in terms of our aforesaid observations.

10. As we have restored the appeal to the file of the CIT(Appeals) for fresh adjudication, therefore, we refrain from adverting to the merits of the case, which, thus, are left open.

11. **Ground of appeal No.3** being general in nature is dismissed as not pressed.

12. In the result, appeal of the assessee firm is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the 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.