

**IN THE INCOME TAX APPELLATE TRIBUNAL "DB" BENCH, PATNA
(Through Virtual Hearing at Kolkata)**

**BEFORE SHRI RAJPAL YADAV, VP
AND
SHRI DR. MANISH BORAD, AM**

**ITA No. 398/PAT/2024
(Assessment Year: 2015-16)**

**Raj Construction
C/o Mahadev Ghosh,
Advocate
BF-199, Salt Lake City,
Kolkata-700064**

Vs.

**Asst. Commissioner of
Income Tax,
Circle - 1(1),
Bhagalpur,
R.N. Plaza, R.B.S.S
Sahay road, Bhagalpur,
Bihar- 812001**

(Appellant)

(Respondent)

PAN No. AAJFR6306F

Assessee by : Shri Mahadev Ghosh, AR
Revenue by : Shri Ashwani Kumar, DR

Date of hearing: 20.08.2024
Date of pronouncement: 29.08.2024

ORDER

PER DR. MANISH BORAD, AM:

This appeal at the instance of the assessee is directed against the order of Commissioner of Income-tax (Appeals) [learned CIT (A)] dated 27th February, 2024, which is arising out of the assessment order under Section 144/143(3) of the Income-tax Act, 1961 (the Act) dated 14th December, 2017.

02. Registry is informed that the appeal is time barred for 5 days. Application for condonation of delay has been filed. The delay in filing of appeal is attributable to the person

looking after the appellate work. An affidavit has been filed as per which the impugned order was handed over to the consultant immediately on receiving through e-portal. We find that the delay was not intentional and considering reasonable cause, we condone the delay and admit the appeal for adjudication.

03. The assessee has raised following grounds of appeal; -

"1. *That under the facts and circumstances of the case the Ld. CIT (A) National Faceless Appeal, Centre (NFAC) has erred in passing the order confirming the disallowance of Sundry Creditors of the amount of 2,37,71,018 is arbitrary, unjustified, bad in law and liable to be annulled for the sake of natural justice.*

2. *That under the facts and circumstances of the case the Ld. CIT(A) without applying his mind properly and ignoring the submission at the time of appeal hearing filed before him has erred to confirm the addition of sundry creditors to the tune of Rs. 2,37,71,018.00 as unexplained cash credit u/s 68 of 1.T. Act, 1961 treating the said amount as bogus is unwarranted, unjustified misleading the facts. Since the sundry creditors amounting to 2,37,71,018.00 is not related to only for this Asstt. Yr. 2015-16. As because it includes 1,13, 20,437/- for earlier yrs.*

3. *That under the facts and circumstances of the case the Ld. CIT(A) failed to appreciate that as the appellant, Firm is Contractor and mainly engaged in the execution of construction of bridges and roads awarded by BIHAR RAJYA PUL NIRMAN NIGAM LIMITED KATIHAR AND PNB MG ROAD*

KATIHAR, & SENIOR PROJECT ENGINEER BIHAR RAJYA PUL NIRMAN NIGAM LIMITED KATIHAR an undertaking of the Govt. of Bihar, the Cash payment is inevitable. Since the appellant is to purchase Sand, Stone chips from road plying Lorry Driver where from no bill is available and they are not accepting Cheque and or Draft. So, payment to them is obviously being made by self-made voucher. And the payment to labours is usually made to Labour Sardar in cash by self-made voucher. I may kindly be allowed to mention here that Profit and Loss and Loss account Balance Sheet has duly been Audited by Qualified Chartered Accountant as per Law.

4. That under the facts and circumstances of the case the Ld. CIT (A) has erred to confirm the addition of sundry creditors amounting to 2,37,71,018.00 since Sales and purchases of the appellant, Firm has been accepted by the Ld. Assessing Officer. No expenditure has been disallowed by the Ld. A.O and moreover, books of accounts has not been rejected. Hence the addition of total sundry creditors including earlier years creditors is unwarranted, unjustified, and liable to be deleted.

5. That under the facts and circumstances of the case the Ld. CIT (A) has erred by not sending Remand report to the assessing officer for verifying the genuineness of Sundry Creditors and Sundry creditors' amount. Hence, the case is liable to be set aside to the assessing officer to make the assessment Renovo."

04. Additional ground raised by the assessee are as under:-

"1. For that the Assistant Commissioner of Income Tax, Circle -1(1), Bhagalpur issued the notice u/s 143(2) of the Income Tax Act, 1961 has no jurisdiction over the case of the assessee hence said notice and the consequential assessment order is bad in law and hence the same is liable to be quashed.

2. For that the Assistant Commissioner of Income Tax, Circle-1(1), Bhagalpur passing the order u/s 144/143(3) of the Income-tax Act, 1961 (the Act), 1961 did not have the territorial jurisdiction over the case of the assessee hence the assessment order is bad in law, void -ab-initio and liable to be quashed."

05. Though, the assessee has raised five grounds as well as additional grounds but effective legal issue is raised stating that the learned Assessing Officer issuing notice under Section 143(2) of the Act had no jurisdiction over the assessee, therefore, the assessment proceedings are bad in law. The remaining grounds are on merits against the addition for unexplained cash credit in the form of sundry creditors at ₹2,37,71,018/-.
06. As regards to the legal issue, challenging the validity of the assessment proceedings for non-issuance of notice under Section 143(2) of the Act by the jurisdictional Assessing Officer, when the learned counsel for the assessee was confronted that a valid notice has been issued under Section 143(2) of the Act dated 21st September, 2016, placed at page no. 23 of the paper book issued by DE/ AC Circle-1, Bhagal to the assessee addressed at Minapur, Salmari

855113, Bihar, selecting the case for limited scrutiny, the learned counsel for the assessee prayed for not pressing the legal grounds. We therefore, dismiss the ground raised on legal issue in ground no.1 as well as additional ground as not pressed.

07. On the other hand, the learned Departmental Representative did not oppose to the request of the learned counsel for the assessee of restoring issues to the file of the learned Assessing Officer for afresh examination.
08. We have heard the rival contentions and perused the records placed before us. The assessee has been fastened with an addition of ₹2,37,71,018/- for unexplained sundry creditors under Section 68 of the Act. We note that the assessee is a partnership firm engaged in construction/contract business. Income of ₹50,07,820/- declared in the return for A.Y. 2015-16 furnished on 27th March, 2016. After the case being selected for limited scrutiny through Computer Assisted Scrutiny Selection (CASS) followed by validly serving notices under Section 143(2) and 142(1) of the Act, during the course of assessment proceedings, the learned Assessing Officer has observed that the assessee has shown the turnover at ₹10,07,10,564/-, whereas the turnover appearing in form no.26As is ₹8,94,18,612/-. Apart from this the only observation of the learned Assessing Officer is that the sundry creditors at ₹2,37,71,018/- could not be verified.



09. It is apparent from the assessment order as well as the impugned order that assessee did not get fair opportunity to plead its case in order to explain the correctness and genuineness of the sundry creditors. Perusal of the paper book shows that the assessee firm is regularly assessed to tax and books of account are duly audited. The copies of audited balance sheet for A.Y. 2014-15 to 2016-17 are placed. During the year under consideration there is turnover of ₹10.07 crore. The assessee has furnished the complete details of purchases of various building material items placed at paper book page no. 40 to 138. Perusal of these details clearly gives an insight that assessee is carrying out its regular activities of purchase of building material and contractual business. List of sundry creditors with requisite details have also been filed.
010. Though the detail of sundry creditors were claimed to be filed before the lower authorities, however, considering the fact that all these details were either not made available to the learned lower authorities or they have not been considered, we admit the evidence placed before us and in the interest of justice and being fair to both the parties, restore the issues raised on merits to the file of the learned Assessing Officer for examining the genuineness of sundry creditors at the year-end by examining the details of purchases as well as confirmation of sundry creditors. If after providing sufficient opportunity to the assessee, the claim of the assessee is found to be correct then, the learned Assessing Officer on considering the facts placed on



record, shall decide the alleged issue in accordance with the law. Thus, ground raised on merit is allowed for statistical purposes.

011. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 29.08.2024.

Sd/-
(RAJPAL YADAV)
(VICE PRESIDENT)

Sd/-
(DR. MANISH BORAD)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 29.08.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata