

**IN THE INCOME TAX APPELLATE TRIBUNAL  
GAUHATI 'E' COURT, AT KOLKATA**

**BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.104/Gau/2019**

**(निर्धारणवर्ष / Assessment Year:2014-15)**

<b>Shri Bijan Kalita</b>	<b>Vs.</b>	<b>DCIT, Circle – 2, Guwahati</b>
<b>Jaswant Road, Tarukamal Bhawan, Pan Bazar, Guwahati, Assam – 781 001.</b>		
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AICPK 5984 D</b>		
<b>(Assessee)</b>	<b>..</b>	<b>(Revenue)</b>

Assesseeby :Shri Sanjay Modi, FCA

Respondent by :Shri M.K. Dal, Addl. CIT, Sr. Dr

सुनवाईकीतारीख/ **Date of Hearing** : **08/06/2020**

घोषणाकीतारीख/**Date of Pronouncement** : **17/06/2019**

**आदेश / O R D E R**

**Per Dr. A. L. Saini:**

The captioned appeal filed by the Assessee pertaining to assessment year 2014-15, is directed against the order passed by the Commissioner of Income Tax (Appeal)-1, Guwahati, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 19.12.2018..

2. Grounds of appeal raised by the Assesseeare as follows:

*"1. For that the order of the learned Commissioner of Income Tax (Appeals) ld. CIT(A) is bad in law, facts and procedure.*

*2. For that the ld. CIT(A) has erred both in law as well as on facts in confirming the arbitrarily made addition by the ld. AO of Rs. 60,45,315/- on account of Sundry Creditor merely for want of PAN of those sundry creditors.*

*3. For that the ld. CIT(A) was not justified in confirming the disallowance of Rs. 17,000/- being payment of late fee of service tax made by the ld. AO.*

*4. For that the ld. CIT(A) was not justified in confirming the disallowance of donation of Rs. 11,000/- made by ld. AO without appreciating the fact that the payment of said donation was made out of commercial expediency.*

*5. For that the ld. CIT(A) was not justified in passing the impugned order without issuing any valid notice to the appellant and without giving any opportunity of hearing and in gross violation of the principles of natural justice.”*

3. At the time of hearing, Learned Counsel informs the Bench that assessee wants to press only ground No. 2 and other grounds were not pressed, therefore, we do not adjudicate the other grounds raised by the assessee.

4. The solitary grievance of the assessee in ground No 2 is that the ld. CIT(A) has erred both in law as well as on facts in confirming the addition made by assessing officer of Rs. 60,45,315/- on account of Sundry Creditor merely for want of PAN of those sundry creditors.

5. The facts of the case which can be stated quite shortly are as follows: During the scrutiny proceedings, the assessing officer on perusal of the statement of accounts of the assessee for the year ended 31<sup>st</sup> March, 2014, noticed that the assessee had claimed sundry creditors to the tune of Rs. 6,48,22,201/-. During the course of assessment proceedings, the assessee was asked to furnish the names along with complete postal address of all the sundry creditors. In response, the assessee submitted a detailed list showing names and addresses of the sundry creditors. The assessing officer, in order to ascertain the genuineness of claim of the assessee, issued notices under section 133(6) of the Income Tax Act, 1961 to 60 (sixty) persons on 18.04.2016, with a request to furnish the ledger account in respect of the assessee Shri Bijan Kalita maintained in their books. Further, summons under section 131 of the Income Tax Act, 1961 were issued on 01.12.2016 to three sundry creditors namely: (i) Shri Nayanmoni Das, (ii) Shri Jagadish Das and (iii) Shri Shankarlal Agarwal requiring their personal appearance before the assessing officer and to give evidence and to produce required

documents such as copy of PAN card, copy of the income tax return, along with income and expenditure account, balance sheet, bank passbook etc.

In compliance to the summon issued under section 131 of the Income Tax Act, 1961, Shri Nayanmoni Das, Shri Jagadish Das and Shri Shankarlal Agarwal appeared before the assessing officer on 08.12.2016 and 09.12.2016. As regard information requisitioned under section 133(6) of the Income tax Act, 1961, the assessing officer had received all the replies form the concerned sundry creditors to whom requisition was made under the above section.

6. While scrutinizing the confirmations received from various individuals who stated to be sundry creditors in the books of the assessee, it was noticed by the assessing officer that in respect of 25 (twenty five) numbers of such individuals either they do not possess PAN or have PAN but not furnish their returns of income. Further, on perusal of the evidences so furnished along with the submission made on 20/12/2016, it was noticed by AO that the assessee had failed to bring any sort of evidences in support of existence of individuals / creditors in the following cases:

SL No.	Name of the individuals/sundry creditors	Amount outstanding in the books of the assessee as at 31.03.2014
01	Basanti Devi	9,41,775/-
02	Pankaj Baishya	8,59,590/-
03	JatinSaikia	8,35,450/-
04	Dharmendrda Sahani	8,55,590/-
05	Dipu Talukdar	8,14,070/-
06	Jayanta Saikia	8,53,580/-
07	Bikash Saharia	8,85,260/-
Total		60,45,315/-

Therefore, AO held that in absence of any evidence, the above transactions so reflected in the books of the assessee on account of sundry creditors, is nothing but assessee's own money which is introduced in the disguise of sundry creditors

and accordingly added back the entire amount of Rs. 60,45,315/- to the total income of the assessee.

7. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has not adjudicated the assessee's appeal on merits but dismissed the appeal of the assessee on account of non-prosecution.

8. Aggrieved, the assessee is in appeal before us.

9. We have heard both the parties and perused the material available on record. Learned Counsel for the assessee submitted before us that most of the creditors are pertaining to previous year and they are coming as opening balance in the assessee's books during the assessment year under consideration. The assessee is subject to tax audit under section 44AB of the Act therefore the auditor as well as assessing officer have already verified these creditors in the preceding previous years therefore genuineness of these creditors should not be doubted. Besides, in response to notice under section 131 of the Act, some creditors personally appeared before the assessing officer and submitted the required documents. The creditors also made the compliances of the notice under section 133(6) of the Act and submitted the required details and documents before the assessing officer, therefore addition made by assessing officer may be deleted.

Per contra, Id DR for the Revenue submitted that assessee has failed to furnish the PAN number of the seven individuals (creditors). The assessee neither could offer any satisfactory explanation nor could furnish any evidences to establish the genuineness of the creditors. Therefore, the addition made by AO to the tune of Rs. 60,45,315/- may be sustained.

10. We note that summons under section 131 of the Income Tax Act, 1961 were issued by the assessing officer on 01.12.2016 to three sundry creditors namely: (i) Shri Nayanmoni Das, (ii) Shri Jagadish Das and (iii) Shri Shankarlal Agarwal requiring their personal appearance before the assessing officer and to give

evidence and to produce required documents such as copy of PAN card, copy of the income tax return, along with income and expenditure account, balance sheet, bank passbook etc.

In compliance to the summon issued under section 131 of the Income Tax Act, 1961, Shri Nayanmoni Das, Shri Jagadish Das and Shri Shankarlal Agarwal appeared before the assessing officer on 08.12.2016 and 09.12.2016. They were examined and separate statements under section 131 of the Income Tax Act, 1961 on oath recorded and placed on record by the assessing officer. These three persons also filed before the assessing officer the requisite details as called for by summon issued under section 131 of the Act. The assessing officer failed to demonstrate any defect in the documents and evidences adduced before him by these creditors.

11. We note that during the scrutiny proceedings, the assessee submitted a detailed list before the assessing officer showing names and addresses of the sundry creditors. The assessing officer, in order to ascertain the genuineness of claim of the assessee, letters in terms of notice under section 133(6) of the Income Tax Act, 1961 were issued to 60 (sixty) persons on 18.04.2016, with a request to furnish the ledger account in respect of the assessee Shri Bijan Kalita maintained in their books.

We note that as regard information requisitioned under section 133(6) of the Income tax Act, 1961, the assessing officer had received all the replies from the concerned sundry creditors to whom requisition was made under the above section. However, while scrutinizing the confirmations received from various individuals who stated to be sundry creditors in the books of the assessee, it was noticed by the assessing officer that in respect of 25 (twenty five) numbers of such individuals either they do not possess PAN or have PAN but not furnish their returns of income. As per assessing officer, the following were the individuals whose confirmation of accounts had been furnished before him (assessing officer) but these individuals had not filed their returns of income.

SL No.	Name of the individuals/sundry creditors	Amount outstanding in the books of the assessee as at 31.03.2014
01	Shafiqul Islam	7,69,006/-
02	Basanti Devi	9,41,775/-
03	Mithu Sharma	8,34,850/-
04	Mantia Das	9,52,550/-
05	Rantu Sharma	8,18,800/-
06	Kanak Baishya	8,85,210/-
07	Gopla Das	9,88,070/-
08	Subhash Biswas	7,85,970/-
09	Utpal Kumar Das	8,22,050/-
10	Daljit Singh	8,92,995/-
11	BirenKalita	12,02,626/-
12	Aparna Kalita	9,89,824/-
13	Sunil Sharma	8,55,987/-
14	Ratan Sharma	8,76,960/-
15	Niyajit Namasudra	9,16,522/-
16	Sanjay Sangma	7,73,450/-
17	Pankaj Baishya	8,59,590/-
18	JatinSaikia	8,35,450/-
19	Dharmendrda Sahani	8,55,590/-
20	Dipu Talukdar	8,14,070/-
21	Jayanta Saikia	8,53,580/-
22	Bikash Saharia	8,85,260/-
23	Harjeet Singh	8,41,780/-
24	Dilip Sutradhar	8,11,240/-
25	Mrinal Kalita	8,33,739/-

The Id Counsel submits before us that most of the above creditors pertain to preceding previous years and the assessing officer had already verified them in the preceding previous years, apart from this, all these creditors responded the notice under section 133(6) of the Income tax Act, 1961 and filed the confirmations, PAN number and therefore confirmed the transactions with the assessee under consideration hence genuineness of these creditors should not be doubted.

12. We note that assessing officer held that the assessee had failed to bring any sort of evidences in support of existence of individuals / creditors in the following cases:

SL No.	Name of the individuals/sundry creditors	Amount outstanding in the books of the assessee as at 31.03.2014
01	Basanti Devi	9,41,775/-
02	Pankaj Baishya	8,59,590/-
03	JatinSaikia	8,35,450/-
04	Dharmendrda Sahani	8,55,590/-
05	Dipu Talukdar	8,14,070/-
06	Jayanta Saikia	8,53,580/-
07	Bikash Saharia	8,85,260/-
Total		60,45,315/-

We note that out of total creditors of Rs. 60,45,315/- which were not considered by the assessing officer, as genuine, as sum of Rs.59,69,285/- were from earlier years, therefore, the balance creditors pertain to the assessment year under consideration is only at Rs. 76,030/- (Rs. 60,45,315-Rs. 59,69,285). The creditors which is coming from the preceding previous year has already been examined by the assessing officer in the scrutiny assessment of preceding previous years, besides the assessee's accounts are subject to tax audit and auditor has certified the balance sheet of the assessee, hence genuineness of the creditors should not be doubted.

So far balance creditors of Rs.76,030/- is concerned, we note that all creditors responded the notice under section 131 of the Act. In addition to this, all creditors filed the confirmations and required documents in response to notice under section 133(6) of the Act therefore the genuineness of the balance creditors should not be doubted.

13. We note that during the assessment proceedings, the assessing officer has recorded the statement of three creditors u/s 131 of the Act, however, he failed to

bring any cogent evidence on record to demonstrate that assessee's creditors are bogus. We note that statement is a good evidence provided it is supported by any tangible material or corroborate evidence. For that, we rely on the order of the Coordinate Bench in the case of Tum Nath Shaw vs ACIT 175 ITD 45 wherein it was held as follows:

*“22. We have heard both the parties and perused the material available on record, we note that the addition made by the Assessing Officer is purely on conjectures and surmises. The assessee has disclosed income Rs.1.8 per tin whereas the Assessing Officer made an addition on account of differential amount without any base and without any evidence on record. The Id AO made this addition solely based on the statement of the assessee. We note that statement is a good evidence provided it is supported by any tangible material or corroborate evidence. We note assessee's account are audited and not rejected by the Assessing Officer therefore to estimate the separate profit in addition to profit shown in the audited books of accounts is not tenable without any tangible material or corroborative evidence, therefore we delete the addition of Rs. 44,120/-”*

14. Now, we shall address the main grievance of the Id DR to the effect that some of the creditors have not filed their PAN numbers therefore these creditors are not genuine. We note that furnishing of PAN number is mandatory as per Rule 115B of the Income Tax Rules, vide entry No. 18, which came into force with effect from 1<sup>st</sup> January, 2016. In assessee's case the assessment year is 2014-15 therefore, Rule 115B does not apply to the assessee and as a result, it is not mandatory for the assessee to furnish the PAN number before the assessing officer. Therefore, the contention of Id DR that since some of the creditors have failed to furnish the PAN number therefore these creditors are bogus, is not acceptable.

15. In sum and substance, we would like to state that since all the creditors during the assessment stage have confirmed the transactions, submitted the required documents and responded the notices u/s 133(6) of the Income Tax Act. In compliance to the summon issued under section 131 of the Income Tax Act, 1961, three creditors namely: Shri Nayanmoni Das, Shri Jagadish Das and Shri



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Shankarlal Agarwal appeared before the assessing officer on 08.12.2016 and 09.12.2016. They were examined and separate statements under section 131 of the Income Tax Act, 1961 on oath recorded and placed on record by the assessing officer. These three persons also filed before the assessing officer the requisite details and documents as called for by summon issued under section 131 of the Act. The assessing officer failed to demonstrate any defect in the documents and evidences adduced before him by these creditors.

Out of total creditors of Rs. 60,45,315/- which were alleged by the AO to be not genuine, as sum of Rs. 59,69,285/- pertain to preceding previous years which have been verified by the AO in the preceding previous years, therefore genuineness of these creditors should not be doubted. All the creditors of the assessee are his regular vendors and transactions with them are genuine business transactions and these transactions with them had been undertaken wholly and exclusively for the purposes of the business activities. We note assessee's accounts are audited and not rejected by the Assessing Officer therefore to estimate the separate profit in addition to profit shown in the audited books of accounts is not tenable without any tangible material or corroborative evidence. We note that since the assessment year under consideration is 2014-15 therefore furnishing of PAN number is not mandatory as per Rule 115B of the Income Tax Rules, vide entry No. 18, which came into force with effect from 1<sup>st</sup> January, 2016. Based on the factual position, as narrated above, we are of the view that the assessee has proved the identity, creditworthiness and genuineness of the creditors, therefore we delete the addition of Rs.60,45,315/-.

16. In the result, the appeal of the assessee is allowed.

**Order pronounced in the Court on 17.06.2020**

Sd/-  
**(A.T. VARKEY)**  
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-  
**(A.L.SAINI)**  
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 17/06/2020  
(Biswajit, Sr.PS)

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Copy of the order forwarded to:

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5. CIT(DR), Gauhati Bench, Guwahati.
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By Order

Senior Private Secretary / DDO / H. O. O  
ITAT, Gauhati Bench