

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI L.P. SAHU, A.M.

ITA.No.7692/Del./2018  
Assessment Year 2014-2015

Shri Ankit Kapoor, B-102, RG City Centre, Plot No.4, Motia Khan, Paharganj, New Delhi. PIN - 110 055. PAN AUZPK1007E	vs.	The Income Tax Officer, Ward-63(4), E-2 Block, Civic Centre, New Delhi. PIN - 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri P. Roychaudhuri, Advocate
For Revenue :	Shri Amit Katoch, Sr. D.R.

Date of Hearing :	04.02.2019
Date of Pronouncement :	06.02.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-20, New Delhi, Dated 25.09.2018, for the A.Y. 2014-2015.

2. We have heard the Learned Representatives of both the parties and perused the findings of the authorities below.

3. Learned Counsel for the Assessee did not press Ground Nos. 2 and 3 of the appeal. The same are dismissed as not pressed.

4. On Ground Nos. 1 and 4 of the appeal, the assessee challenged the addition of Rs.1,27,93,835/- on account of sundry creditors and addition of Rs.11,18,170/- on account of expenses of the creditors.

5. Briefly the facts of the case are that the assessee is engaged in the business of Trading and Export of processed and non-processed Buffalo Meat. The A.O. noted that assessee has shown the list of the creditors on 31.03.2014 which are 11 in number. The details of the same are noted in the impugned order. Therefore, notice under section 133(6) of the I.T. Act, 1961, were issued to the creditors calling the information. None attended nor any application was received for adjournment. Summons under section 131 of the I.T. Act, 1961, were also issued to the 11 creditors, but, nobody attended the proceedings. A.O. noted that out of 11 creditors, confirmations from 03 creditors were received viz., M/s. True Logistics, M/s. Snowman

Logistics and M/s. Sarah Foods. The A.O, therefore, noted that for these 08 creditors who did not respond to the notice under section 133(6) of the I.T. Act and summons under section 131 of the I.T. Act, the amount of Rs.5,14,40,739/- remain unexplained. The A.O. also noted that only one creditor Mr. Jameel Ahmed attended on 26.12.2016 and stated that he has not done any correspondence of sale and purchase of Buffalo during financial year under reference and refused to give further statement. The A.O, therefore, noted that since the creditors have failed to respond to the notice under section 133(6) of the I.T. Act and summons under section 131 of the I.T. Act, therefore, addition shall have to be made of the aforesaid amount. The A.O. accordingly, made the addition of Rs.5,14,40,739/- as income from other sources on account of unexplained credits.

5.1. The A.O. also noted that during assessment proceedings, the assessee was asked to produce the details of expenses of remaining following creditors i.e., M/s. Ashish Enterprises Rs.8,345/-, Freight Aids (India) Pvt.

Ltd., Rs.1,24,369/-, Jigar Container Movers Rs.3,91,500/- and Nanak Food Industries Pvt. Ltd., Rs.6,65,956/- totaling to Rs.11,18,170/-. The A.O. noted that assessee could not produce any details i.e., bills/vouchers, therefore, in the absence of any evidence on record, A.O. disallowed the above amount and added to the total income of assessee.

6. The assessee preferred an appeal before the Ld. CIT(A) who have dismissed the appeal of assessee for default vide Order Dated 24.11.2017. The assessee filed an appeal before ITAT in ITA.No.7306/Del./2017 and the Tribunal vide Order Dated 25.01.2018, restored the matter to the file of Ld. CIT(A) for passing the Order afresh. The Ld. CIT(A), accordingly, taken-up the matter afresh. The Ld. CIT(A) noted that during the set-aside appellate proceedings, the assessee has filed the written submissions but without any supporting evidence and paper book. The Counsel for Assessee submitted before the Ld. CIT(A) that no document is required to be submitted except written submissions. The written submissions of the assessee is reproduced in the appellate order. The assessee in the written submissions

submitted that in respect of 11 creditors above the amount comes to Rs.2,58,45,298/- only and the A.O. did not verify the remaining amount. The A.O. did not issue any notice nor any confirmation was asked for. The A.O. made the addition in a mechanical manner, therefore, addition is not sustainable. Three creditors have complied with the notice as above in a sum of Rs.1,30,51,443/- under section 133(6) of the I.T. Act, 1961. The A.O. has not pointed-out any shortcomings in the confirmation/reply of these creditors. It was further submitted that besides these three creditors, one more creditor Mr. Jameel Ahmed responded to the notice under section 133(6) of the I.T. Act against whom there was an outstanding amount of Rs.12,39,055/- appeared before A.O. who has not stated anything against the assessee. Therefore, this addition is also unjustified. Since no right of cross-examination have been given to his statement, therefore, no addition should be made. As regards disallowance of purchases to the tune of Rs.11,18,170/-, it was submitted that it is an adhoc addition.

7. The Ld. CIT(A) considering the issue in detail and after giving an opportunity of being heard to the assessee and considering the material on record, deleted the addition of Rs.3,86,46,884/- (Rs.2,55,95,441/- + Rs.1,30,51,443/-). However, as regards the balance amount of unexplained credit for the amount of Rs.1,27,93,855/- challenged under appeal in respect of 08 creditors in which the A.O. has issued notice under section 133(6) of the I.T. Act, 1961 as well as summons under section 131 of the I.T. Act, 1961, it is noted that they did not comply either before A.O. nor filed any confirmation. The details of the 08 creditors are noted in para 9.6 of the appellate order. The Ld. CIT(A) noted that even during the course of first appellate proceedings as well as before ITAT during set-aside appellate proceedings, the assessee could not produce any documentary evidence in the form of confirmation or any other documentary evidences in respect of the claim that they are genuine creditors, and only written submissions have been filed. The Ld. CIT(A) also noted that Counsel for Assessee also conceded that no documentary evidences has to be

produced in respect of this claim and this fact has also been recorded in the Order sheet Dated 11.09.2018. The Ld. CIT(A), therefore, noted that onus was upon the assessee to prove genuineness of these credit amounts. A.O. has made efforts to get information by issuing notice under section 133(6) of the I.T. Act and summons under section 131 of the I.T. Act, but, assessee did not file any documentary evidences and also failed to substantiate its claim of the remaining credit amount of Rs.1,27,93,855/-. The Ld. CIT(A) also noted that Mr. Jameel Ahmed did not confirmed the transaction with the assessee and the assessee failed to produce any documentary evidence or confirmation from Mr. Jameel Ahmed regarding the credit balance shown against his name. The Ld. CIT(A) in the absence of any evidence on record, confirmed the addition of Rs.1,27,93,855/-. The appeal of Assessee on this ground was dismissed. The Ld. CIT(A) relied upon several decisions in support of his findings and also noted that despite sufficient opportunities given to the assessee, the assessee did not produce any evidence at any stage. Therefore, in the

absence of even confirmation on record, the addition shall have to be maintained. This ground of the assessee was accordingly dismissed by the Ld. CIT(A).

8. The Ld. CIT(A) as regards the addition of Rs.11,18,170/- also noted that assessee did not file any supporting evidence. The assessee was given sufficient opportunities to produce the bills/vouchers and evidence for the same. Therefore, in the absence of any evidence on record, this addition was confirmed. This ground of appeal of assessee was dismissed by the Ld. CIT(A). The appeal of assessee was accordingly dismissed on both the grounds.

9. We have heard the Learned Representatives of both the parties. Learned Counsel for the Assessee submitted that the matter may be remanded back to the Ld. CIT(A) for issuing fresh notice under section 133(6) of the I.T. Act and summons under section 131 of the I.T. Act to all the parties to verify the transactions.

10. On the other hand, Ld. D.R. submitted that no basis have been shown as to why further opportunity be



given to the assessee for issuing notice/summons to the remaining creditors because assessee has already been given adequate opportunity to produce the evidence in this regard, but, assessee failed to comply with the same. Therefore, appeal of assessee may be dismissed.

11. We have considered the rival submissions. The Hon'ble Calcutta High Court in the case of Bharati Pvt. Ltd., 111 ITR 951 and United Commercial Industrial Co. Pvt. Ltd., 187 ITR 596 held that *"mere filing of confirmations not enough to prove genuineness of the credit."* In the present case, the A.O. issued notice under section 133(6) of the I.T. Act, 1961 as well as summons under section 131 of the I.T. Act, 1961 to the below mentioned creditors for verifying the genuineness of the transaction.

S.No.	Name of Creditors	Amount in Rs.	Address
1.	AL Azlan Frozen Foods	46,42,400	Vill. Chimyawali, Moradabad Rd., Sanbhal Moradabad (UP) – 244 302.
2.	Aabid & Others	14,61,330	Mohalla Bajrai, Ward No.25, Hasanpur, Amroha (UP).
3.	Aashaqin & Others	12,59,190	Vill. Sathla, Thsil Mawana Distt. Meerut
4.	Izrail & Others	11,17,085	Mohll. Qureshi, Wasu Dev Road, Near Minar Masjidh, Amroha (UP).
5.	Jameel & Others	12,39,055	Janta Biri Wale, Mohll. Samilliyan Moli Wala Hasanpura, Amroha (UP).

6.	Kafeel & Others	9,83,100	113, Mohalla Bakkar Khaswan, Tehsil, Sikandarabad, Distt. Bullandsaha (UP)
7.	Shuaib & Others	10,63,745	Mohhalla Sahib Chabutr, Near Ghuthe Dakhana, JP Nagar, Amroha (UP).
8.	Suleman & Others	10,27,950	Mohlla Ratiya, Lai Bagh, Hassanpur, Amroha (UP).
	Total	1,27,93,855	

11.1. None of the above creditors have complied with the notice and summons of the A.O. The assessee did not file any confirmation or any other document from these creditors to verify the genuineness of the transactions. The assessee has been given sufficient opportunity to prove his case that he has received genuine credits in the matter. However, the assessee despite giving sufficient opportunity did not produce any confirmation or the documentary evidence to prove the genuineness of the credits. One creditor Mr. Jameel Ahmad appeared before A.O. but he has not confirmed the transaction with the assessee. These facts clearly show that assessee failed to adduce any sufficient evidences on record to prove genuineness of the credits in the matter. The Tribunal has also remanded back the matter to the Ld. CIT(A) but despite giving fresh opportunity, the assessee did not do anything in the matter.

Even before the Tribunal, the assessee did not make any attempt to adduce any additional evidence with prayer, which would, therefore, show that assessee has no evidence to prove genuineness of these credits. It is well settled Law that burden is upon the assessee to prove the identity of the creditors, their creditworthiness and genuineness of the transaction in the matter. However, assessee failed to produce any documentary evidence and confirmations from the creditors. Therefore, there is no reason to restore the matter back to the file of Ld. CIT(A) for issuing of fresh summons. No interference is called for in the matter. This ground of appeal of assessee is accordingly dismissed.

12. As regards the disallowance of expenses on creditors, the assessee did not produce any evidence before the authorities below. Therefore, in the absence of any evidence, no interference is called for in the matter. This ground of appeal of assessee is also dismissed.

13. In the result, appeal of assessee is dismissed.

Order pronounced in the open Court.

Sd/-  
(L.P. SAHU)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 06<sup>th</sup> February, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi