

**IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH,
“VIRTUAL HEARING” AT KOLKATA**

(समक्ष श्री ऐ. टी. वर्की, न्यायीक सदस्य)

[Before Shri A. T. Varkey, JM]

I.T.A. No. 41/Gau/2019
Assessment Years: 2014-15

Nirja Khatuwala (PAN:AFFPK 9172 D)	Vs.	ITO, Ward-2, Nagaon
Appellant		Respondent

Date of Hearing (Virtual)	04.11.2020
Date of Pronouncement	27.11.2020
For the Appellant	Shri Akkal Dudhwewala, A.R
For the Respondent	Shri Jayanta Khanra, D.R

ORDER

This appeal is preferred by the assessee against the order of Ld. CIT(A)-Guwahati-1, Guwahati dated 12.11.2018 for A.Y. 2014-15.

2. The sole issue is against the action of ld. CIT(A) confirming the addition of Rs. 35,34,509/- u/s 68 of the Income Tax Act, 1961 (herein after, ‘the Act’).

3. Brief facts of the case as noted by the authorities below is that the assessee had filed return of income declaring total income of Rs. 8,64,800/-. The case was selected for scrutiny through CASS for limited scrutiny with the points of identification being large sundry creditors in comparison to low net profit. The Assessing Officer while examining the case of all the sundry creditors whose balance were outstanding as of the end of the previous year, found following three parties did not respond to his Section 133(6) notice, therefore he drew adverse inference against the assessee against these three creditors.

Sl. No.	Creditors	Amount added (in Rs.)
1.	M/s Lhaki Steels and Rolling Pvt. Ltd., 1 st Floor, RICBL Complex, Phuentsholing, Bhutan, P. B. No.	7,18,920/-

	252	
2.	Bhutan Rolling Mills, Flat No. 8, Samdrupling House, Pelkhil Lam, Phuensholing, Bhutan, P.O. 114	20,47,374/-
3.	Bajrang Traders, Golapi Market, NH-37, Lalmati, Beltola, Guwahati-781029	7,68,215/-
	Total	35,34,509/-

According to the Assessing Officer, even though he confronted the assessee about non service/response of notice u/s 133(6) of the Act to these sundry creditors, no satisfactory replies were received from the assessee, therefore he made an addition of Rs. 35,34,509/-.

4. Aggrieved the assessee preferred an appeal before the Id. CIT(A) who confirmed the action of Assessing Officer by holding that even though the assessee discharged the initial onus on her to furnish the details of the sundry creditors, however when the AO verified the claim of assessee, and sent notice to these three parties either it could not be served or it did not elicit any response, therefore Assessing Officer after confronting the assessee about this adverse fact and couldn't receive any satisfactory replies from the assessee, he drew adverse inference against the genuineness of the three sundry creditors. According to Ld. CIT(A) even though assessee had discharged its initial onus in respect of these three sundry creditors by furnishing details, address etc, however, when the verification was done by the AO it failed, and when this adverse fact was confronted by AO to assessee, burden/onus shifted from the AO to assessee to prove the genuineness of the sundry creditors and in that process when he confronted the assessee with the information of non-response from the three sundry creditors, the assessee failed to give any satisfactory replies to prove the genuineness of the sundry creditors. Therefore, according to Ld. CIT(A), the Assessing Officer rightly drew adverse inference against the assessee, therefore, he confirmed the addition.

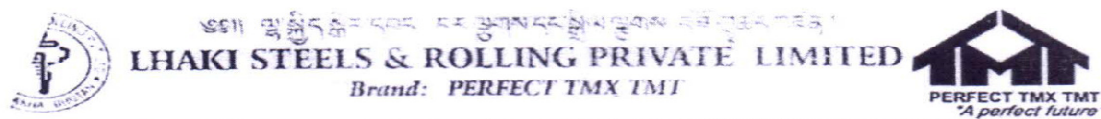
5. Aggrieved the assessee is before me.

6. I have heard both the parties and perused the records. Before me, the Id. A.R Shri Akkal Dudhwewala submitted that these are routine trade credits while doing

business and since assessee is a trader and has purchased tradable material/goods i.e. equipments from the three sundry creditors to whom the assessee was indebted to pay for this trading liability was duly reflected which according to him, could not have been added u/s. 68 of the Act. Further, according to Id. AR, these tradable materials were purchased by the assessee in respect of two sundry creditors to the tune of Rs.27,66,294/- emanates out of balances brought forward from the earlier years in the previous year (not in this F.Y.) and the assessee had later squared up this credit in the subsequent assessment year. According to Id. A.R, these are trade credits and not a sum of money credited in the books of the assessee and therefore Section 68 addition is not attracted. According to him since no sum of money was credited in the books of the assessee from these three sundry creditors, addition cannot be made u/s Section 68 of the Act and it will come into play only when sum of money is credited in the books of assessee. The Ld. A.R wondered as to how section 68 of the Act can be applied on the facts of this case because according to him, the assessee had received goods from these three creditors who are suppliers of goods and consideration (purchase price of goods) has to be made by assessee to these creditors/suppliers, so when the assessee makes the payments to them, consideration/amount/sum of money will be credited in their books (suppliers) and not that of the assessee's and therefore according to him, no addition could have been made legally u/s 68 of the Act as held by Hon'ble Delhi High Court in CIT vs. Ritu Anurag Agarwal (2 DTL online 134).

7. Coming to the merits of the addition, the Ld. A.R. submitted that out of total outstanding sundry creditors, the AO issued notices to all the eleven (11) sundry creditors, and pursuant to which eight (8) responded to the AO's notice u/s 133(6), so he accepted their genuineness. However, since three sundry creditors could not respond to the notice, the AO drew adverse inference against them. Thereafter the Id. A.R drew our attention to the details in respect of each sundry creditors namely (i) M/s Lhaki Steels and Rolling Pvt. Ltd ii) Bhutan Rolling Mills and iii) Bajrang Traders and pointed out that among these sundry creditors first two sundry creditors who supplied goods to the assessee are foreign entities and non-residents of India which fact is discernible from their postal address and they are both residents of

Bhutan. In respect of M/s Lhaki Steels and Rolling Pvt. Ltd. (sl. No.1) (supra) the Ld. AR drew our attention to page no. 15 of the Paper book from which I note that the assessee has purchased goods worth Rs. 7,18,920/- on 30.09.2012 i.e. previous assessment year (AY 2013-14) and this amount had been debited in M/s Lhaki Steels account (supplier / creditor's account) i.e. AY 2013-14 and assessee has squared up the payments on 27.03.2015 & 31.03.2015 through bank RTGS a sum of Rs. 5,00,000/- and Rs. 2,18,920/- respectively (i.e. AY 2015-16) and then this amount was credited in the account of M/s Lhaki Steels and Rolling Pvt. Ltd. and the A.R drew our attention to page 16 wherein the confirmation has been received from the Lhaki Steels and Rolling Pvt. Ltd. which is found placed at page 17 of paper book which is reproduced as under:



To,
Krishna Hardware
Old A T Road, Haibargaon,
Nagaon (Assam) – 782002
TIN : 18700096663
CST No. 18949927176

Subject : Confirmation of Payment Received

Dear Sir/Madam,

We hereby confirm as follows:-

1. Opening Balance as on 01.04.2014 (Receivable by us from You) was Rs. 718,920/- (Against Bill No. 4037 dated 30.09.2012).
2. Payments against the said Bill was received by us in F.Y. 2014-15 as below :-

RTGS/NEFT dtd. 27.03.2015	Rs. 500,000/-
RTGS/NEFT dtd. 31.03.2015	Rs. 218,920/-
Total Payment Received	Rs. 718,920/-

Thanking You.

Yours faithfully,
For Lhaki Steels & Rolling Pvt. Ltd.

Our Units :

**BHUTAN ROLLING MILLS LIMITED
DRUK IRON & STEEL (P) LIMITED
BHUTAN STEEL LIMITED
1st Floor, RICBL Building
Post Box. 252, Phuentsholing : Bhutan
Tel # 00975-5-251640, Fax # 00975-5-252909**

8. Likewise in respect of sundry creditor shown in Sl. No. 2, he drew our attention to page 18 of PB from which I note that the assessee had purchased goods worth Rs. 30,47,374/- in the previous assessment year i.e AY 2013-14 [on various data dated 13.09.2012, 14.09.2012, 24.09.2012, 25.09.2012 (AY 2013-14)] and the assessee had made payment in this assessment year 2014-15 to the tune of Rs. 10,00,000/- through banking channel Rs. 5,00,000/- each on 20.09.2013 and 22.03.2014 and taking note of this fact the Assessing Officer has added only Rs. 20,47,374/- . And it was brought to my notice that the assessee had squared up the balance payment to this sundry creditor in the subsequent assessment year i.e. AY 2015-16 on 09.09.2014, 23.02.2015, 10.03.2015, 14.03.2015 , 14.03.2015 and thus the total amount of Rs. 30,47,374/- was credited to this sundry creditor. The Ld. A.R drew my attention to the confirmation from the party placed at page 19 of paper book, which is as under:

5th January, 2017

To Whom It May Concern

This to conform that Outstanding Balance of M/s Krishna Hardware, Old AT Road, Haibargaon, Naogaon, Assam in our Books of Account is Rs 20,47,374/- (In words Twenty Lac Forty Seven Thousand Three Hundred Seventy Four Only) as on 31st March, 2014.

As per details:-

TIN No. 18700096663

CST No.18949927176

Materials Supplied:-TMT Rods.

<u>Bill No.</u>	<u>Date</u>	<u>Amount</u>
BRML/2012/1968	13-09-2012	813186.00
BRML/2012/1973	14-09-2012	814000.00
BRML/2012/2047	24-09-2012	608594.00
BRML/2012/2051	25-09-2012	811594.00
Total		30,47,374/-

Amount Received:-

20-09-2013	Cheque No.466114	500000.00
22-03-2014	Cheque No.518203	500000.00
Total		10,00,000/-

Thanking you
Yours faithfully
For, Bhutan Rolling Mills Limited

9. Thereafter the Ld A.R drew our attention to the sundry debtor shown at Sl. No. 3. He drew my attention to page 21 and 22 of the PB from where I note that the assessee has squared up the sum of Rs. 7,68,215/- on 31.03.2014 (i.e. in AY 2016-17). According to Ld. A.R this sundry creditor was a proprietary concern from inception and it had to be closed down due to financial constraints which fact is evident from a perusal of copy of letter which is found at page 22 of the PB. Since the business of this sundry creditor M/s Bajrang Traders, Gauhati was closed down, the AO's notice u/s 133(6) could not be served upon it and this was the reason why the AO drew adverse inference against the genuineness of this sundry creditor.

10. Thus from the facts and circumstances discussed supra, I note that the out of total outstanding credits of Rs. 2,23,89,337/- [total number of sundry creditors were eleven (11)], the Assessing Officer was not satisfied about the genuinity in respect of credit worth Rs. 34,35,509/- i.e. only in respect of three sundry creditors which comes to 16% of total sundry creditors. In other words, the Assessing Officer was satisfied about the genuineness in respect of 84% of sundry creditor as claimed by the assessee. And the reason he was not satisfied with these three sundry creditors was that he did not get reply from two of the creditors situated at Bhutan and as far as the one situated at Guwahati is concerned the notice had returned back to him un-served. It has been discussed (supra) that the sundry creditor at Gauhati proprietor Shri Sougata Bhowal of M/s Bajrang Traders had confirmed that he has shut down the proprietary concern due to financial constraints. It is noted that this party has filed the confirmation of receiving Rs. 7,68,250/- in FY 2015-16 by letter dated 10.12.2016 (page 22 of paper book) and though the assessee has given confirmation of receiving the amount, the AO rejected the same on the flimsy reason that assessee was furnishing this document before him and not the sundry creditor proprietor Shri Sougata Bhowal of M/s Bajrang Traders, which action of AO cannot be countenanced, because, when the assessee produced the confirmation from the said party, if the AO doubts the veracity of the document then he was duty bound to cross-verify the veracity of the same. It is noted that in respect of M/s Bajrang Traders the assessee has

placed on record the copy of the invoice raised by the said supplier which *inter alia* comprised of the details of purchases, name , address, PAN, VAT details of the supplier. The quantity and value of purchases formed part of the audited accounts, quantitative details, gross profit margin and also various accounting ratios of the appellant. In the report furnished by the tax auditor in Form 3CA, no adverse comments or qualifications have been given in this regard. Further no specific infirmity or defect has been pointed out by the AO in respect of the books of accounts of the appellant. In the confirmation letter placed at Page 22 of PB, it has also been clarified by Shri Saugata Bhowal, proprietor of M/s Bajrang Traders that his proprietorship concern had been closed down due to financial problems so it can be presumed that it was the reason why the AO's notice u/s 133(6) could not be served upon it, so no adverse view was warranted against this sundry creditor. And as I have already noted (supra) the other two sundry creditors M/s Lhaki Steels and Rolling Pvt. Ltd. and M/s. Bhutan Rolling Mills were non-residents and had been duly served the notice issued by AO u/s 133(6) of the Act, and they both have already furnished their confirmation to have received the balance amount from assessee by RTGS/NEFT. The details have already been discussed supra after referring Page 19 (M/s. Bhutan Rolling Mills Ltd as well as page 17 M/s Lhaki Steels and Rolling Pvt. Ltd.) and copy of confirmation has been reproduced supra. And I not that these details and facts were filed before the AO/Ld. CIT(A) and no infirmities could be pointed out by the lower authorities, so in the light of aforesaid facts and circumstances, I am of the view that no addition was warranted u/s 68 of the Act and therefore, I direct the deletion of addition of Rs 35,34,509/-.

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

Order is pronounced in the open court on 27.11.2020.

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 27.11.2020

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Nirja Khatuwala, C/O, Rahul Raj Jain & CO, H. No. 15, 1st Floor, Bye Lane-2, Shaktigarh Path, Bhangagarh, G.S. Road, Guwahati-5, Assam-781005.
2. Respondent- ITO, Ward-2, Nagaon
3. The CIT(A)-Guwahati (sent through e-mail)
4. CIT- , Guwahati
5. DR, Gauhati Bench, Guwahati (sent through e-mail)

True Copy

By Order

Sr. Private Secretary/ DDO
ITAT, Gauhati Bench, Guwahati