

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 217, 218 & 219/GTY/2024
Assessment Years: 2013-14, 2014-15 & 2016-17**

**I.T.A. Nos.: 220 & 222/GTY/2024
Assessment Year: 2017-18**

**I.T.A. Nos.: 221 & 223/GTY/2024
Assessment Year: 2018-19**

Jayanta Khaund	Vs.	ACIT, CIR-1, Guwahati
(Appellant)		(Respondent)
PAN: AKKPK7824L		

Appearances:

Assessee represented by : Sweta Jain, FCA.

Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : March 10th, 2025

Date of pronouncing the order : March 21st, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

These appeals filed by the assessee are against separate orders of the Ld. Commissioner of Income Tax-NFAC, Delhi [hereinafter referred



to as 'the Ld. CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2013-14 to AY 2018-19 dated 17.09.2024. Since the issues are common, therefore, all these appeals were taken up together, heard together and are being decided vide this common order for the sake of convenience and brevity.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

ITA No. 217/GTY/2024:

- 1. For that the initiation of reassessment proceeding on 28-07-2022 by issue of notice u/s 148 is bad in law and as such assessment order based on such illegal notice is liable to be annulled.*
- 2. For that under the facts & circumstances of the case, learned A.O. is not justified in initiating reassessment proceeding.*
- 3. For that the learned A.O. is not justified in making addition of Rs.64,64,610/- u/s 68 of I.T. Act after holding the same as not genuine expenditure.*
- 4. The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.*

ITA No. 218/KOL/2024:

- 1. For that the initiation of reassessment proceeding on 28-07-2022 by issue of notice u/s 148 is bad in law and as such assessment order based on such illegal notice is liable to be annulled.*
- 2. For that under the facts & circumstances of the case, learned A.O. is not justified in initiating reassessment proceeding.*
- 3. For that the learned A.O. is not justified in making addition of Rs.7,29,96,131/- u/s 68 of I.T. Act.*
- 4. The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.*

ITA No. 219/GTY/2024:

- 1. For that the initiation of reassessment proceeding on 28-07-2022 by issue of notice u/s 148 is bad in law and as such assessment order based on such illegal notice is liable to be annulled.*



2. For that under the facts & circumstances of the case, learned A.O. is not justified in initiating reassessment proceeding.

3. For that the learned A.O. is not justified in making addition of Rs.3,55,59,580/- u/s 68 of I.T. Act after holding the same as not genuine expenditure.

4. The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.

ITA No. 220/GTY/2024:

1. For that the initiation of reassessment proceeding on 28-07-2022 by issue of notice u/s 148 is bad in law and as such assessment order based on such illegal notice is liable to be annulled.

2. For that under the facts & circumstances of the case, learned A.O. is not justified in initiating reassessment proceeding.

3. For that the learned A.O. is not justified in making addition of Rs.2,90,16,960/- u/s 68 of I.T. Act after holding the same as not genuine expenditure.

4. The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.

ITA No. 221/GTY/2024:

1. For that under the facts & circumstances of the case, learned A.O. is not justified in initiating reassessment proceeding.

2. For that the learned A.O. is not justified in making addition of Rs. 19,93,72,482/- u/s 68 of I.T. Act.

3. The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.

ITA No. 222/GTY/2024:

1. For that under the facts & circumstances of the case learned A.O. is not justified in levying penalty u/s 270A of Rs.2,32,362/-

2. The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.

ITA No. 223/GTY/2024:

1. For that under the facts & circumstances of the case learned A.O. is not justified in levying penalty u/s 271AAC(1) of Rs.21,39.825/-.



2. The Appellant craves the leave to take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.”

3. We will take up ITA No. 217/GTY/2024 as the lead case. Brief facts of the case are that in AY 2015-16 the case was selected for limited scrutiny through CASS and the assessment was completed u/s 143(3) on 26.12.2017 assessing total income at Rs. 2,48,08,760/- after making addition of Rs. 1,88,60,982/- on account of bogus purchases (liability shown as sundry creditors) claimed during the period from 01.04.2014 to 31.03.2015. The addition was made as the assessee failed to produce any evidence in support of the claim of purchases made and the existence of the sundry creditors could not be proved in spite of he having been provided several opportunities. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A). During the course of the appeal, several opportunities were afforded to the assessee to prove the claim on the purchases made by the assessee during the year and consequential sundry creditors raised on account of the same. The assessee was also given an opportunity to produce the supporting bills & vouchers and payment details for the above and accordingly summons u/s 131 of the Act was issued by the DCIT, Circle-1, Guwahati on 31.01.2019 and the assessee was requested to produce the details/documents, subsequent payments along with supporting bank statements and books of account for the purchases made during FY 2014-15 from Shri Toko Kach, Neelam Tain, Gem Taje and M/s. Tagum Enterprises, the bills and vouchers of which were produced as additional evidence before the Ld. CIT(A). The assessee failed to produce the required details which were called for and could produce nothing in spite of several opportunities being afforded. The Ld.



CIT(A) passed an order dated 17.09.2024 confirming the addition of Rs. 1,88,60,982/- on account of bogus purchases (liability shown as Sundry Creditors) and further enhancement of Rs. 6,80,71,300/- u/s 41(1) read with section 251(2) of the Act. While enhancing the addition the Ld. CIT(A) had given the following directions:

“Further, in view of the fact that the Appellant could not furnish Bills and Vouchers both during the course of assessment proceedings as well as appellate proceedings, it emanates that the Appellant has not maintained any books of Accounts. Accordingly, the AO is directed to re-assess the income of the Appellant for the previous years as well as subsequent years i.e. 2013-14, 2014-15, 2016-17, 2017-18 and 2018-19 in accordance with the provisions of law.”

4. Accordingly, following the due procedure as prescribed by the amended provisions relating to reopening u/s 148A of the Act, the Ld. Jurisdictional Assessing Officer issued a show-cause notice u/s 148A(b) to the assessee on 01.06.2022. Subsequently, a notice u/s 148 of the Act was also issued. The Ld. AO has given details on page 3 of the assessment order of the various notices/communication issued to the assessee which were not responded. Subsequently a notice u/s 148 of the Act was issued. For the AY 2013-14, the assessee had filed the return of income electronically on 08.11.2013 declaring total income of Rs. 48,02,640/- and since the assessee failed to submit the requisite details evidencing the genuineness of the sundry creditors of Rs. 3,15,29,860/- shown in the return of income, the assessment was made u/s 144 of the Act and a sum of Rs. 64,64,610/- was added to the returned income of the assessee and total income was assessed at Rs. 1,12,67,280/-. The Ld. AO made the addition as per para 3.4.10 of the suspect order and the relevant portion of the assessment order is extracted as under:

“3.4.9 It is pertinent to note here that the assessee was required to furnish the necessary details/explanation. The facts of the case are that the assessee has shown an amount of Rs.3,15,29,860/- as “Sundry Creditors” and Rs.8,05,46,338/- as “Contract Expenditure” in his books of accounts for the year under consideration. However, he could not establish the genuineness of his claim on the matter of the claim of purchases and consequential liability shown as Sundry Creditors. The vital statistics of the assessee, as appearing in the profit & loss account & balance sheet in the return of income of the assessee are as under:

AY.	Purchases	Sundry Creditors	Addition to Sr. Creditors	Sales	Sundry Debtors
2011-12	4,90,10,191	74,35,500	N.A.	5,48,23,004	NIL
2012-13	6,43,31,240	2,50,65,250	1,76,29,750	6,43,85,445	NIL
2013-14	6,96,55,859	3,15,29,860	64,64,610	9,26,16,611	NIL

3.4.10 The assessee has shown Sundry Creditors as on 31/03/2013 at Rs.3,15,29,860/- which were Rs.2,50,65,250/- as on 31/03/2012. There is year on year increase in purchase of Rs.53,24,619/- whereas creditors have increased from Rs.2,50,65,250/- to Rs.3,15,29,860/- i.e. an addition of Rs.64,64,610/- to the Sr. Creditors on year on year basis. It is pertinent to mention here that the assessee has shown Sr. Debtors at Rs. NIL for the year under consideration as well as the preceding year. This indicates that the outstanding creditors are non-genuine because there is no prudent reason for non-payment to such creditors as there are no outstanding debtors. The assessee is unable to prove that these creditors are real as he has not submitted any documentary evidences in this regard like name of the purchase parties, PAN of the purchase parties, copies of ledger, purchase invoices, account confirmations, etc. The assessee was specifically asked to prove the genuineness of such sundry creditors appearing in the books of account. However, the assessee has failed to furnish any details in this regard. In view of the same, it is construed that the creditors appearing in the books of accounts to the tune of Rs.64,64,610/- are not real and genuine and hence, the expenditure claimed in the books of account as ‘Purchases’ are treated as bogus/non-genuine.”

5. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A), vide the impugned order, has reproduced the assessment order of the Ld. AO from page 2 to page 9. On page 9 relating to the statement of facts it is mentioned that the assessee has written “As per assessment order”. Thereafter, the Ld.



CIT(A) has noted in para 5 that several opportunities were provided including a show cause letter as to why the appeal of the assessee should not be dismissed due to repeated non-compliances. But on the appointed date on 10.09.2024 the assessee chose to file adjournment petition again to avoid to appellate proceeding. Therefore, he decided the appeal of the assessee on primary ground of non-compliance. As regards the merits of the case, the Ld. CIT(A) has mentioned as under and dismissed all the substantial grounds taken by the assessee by upholding the order of the Ld. AO:

“6.5 On merits also, the appellant has no case. The main ground taken by the appellant relates to addition of Rs.64,64,610/- u/s 68 of the I.T. Act, 1961. It is seen from the assessment order that the case of the assessee appellant was reopened u/s 147 of the I.T. Act, 1961 to re-assess the income for AY 2013-14 in compliance to the direction given by the CIT(A)- 1, Guwahati while adjudicating the appellant's own case for AY 2015-16. During the assessment proceedings, it was noticed by the Ld. AO that an amount of Rs. 3,15,29,860/- was claimed as "Sundry Creditors" for FY 2012-13. However, during the course of the proceedings, the appellant failed to submit the requisite details evidencing the genuineness of the Sundry Creditors shown in the Return of Income though several opportunities were provided by the Id. AO by issuing notices including show cause notices. It was seen that the appellant had shown Sundry Creditors as on 31/03/2013 at Rs. 3,15,29,860/- which were Rs. 2,50,65,250/- as on 31/03/2012. There was year on year increase in purchase of Rs. 53,24,619/- whereas creditors were increased from Rs. 2,50,65,250/- to Rs. 3,15,29,860/- i.e. an addition of Rs. 64,64,610/- to the Sundry Creditors on year on year basis. It was also seen that the appellant had claimed Sundry Debtors at Rs. Nil for the subject assessment year as well as the preceding assessment year. Since the appellant has failed to furnish any details and explanation in this regard. In view of the same, it was presumed that the creditors appearing in the books of accounts to the tune of Rs.64,64,610/- were not real and genuine and hence, the expenditure claimed in the books of account as 'Purchases' were treated as bogus/non-genuine.

Accordingly, Rs.64,64,610/- was added back u/s 68 of the I.T. Act, 1961.



6.5.1 During the course of appellate proceeding, the appellant failed to explain the grounds taken against the issues. The reason for addition was clearly mentioned in the assessment order. However, the appellant made no effort to counter the findings of the Ld. AO either by uploading relevant document(s) or explaining the matter in detail and chose to remain silent about the issue. It is seen from the assessment order that the appellant failed to respond against the opportunities including notices u/s 148, 142(1) and show cause notices provided to him during assessment proceedings. Although the appellant had claimed substantial amount of sundry creditors for FY 2012-13, he failed to produce any documentary evidence before the Ld. AO. During the course of appellate proceeding also the appellant was provided several opportunities for uploading explanation along with supporting evidence in support of grounds of appeal, however, he failed to submit any plausible explanation and supporting documents regarding justification of huge amount of sundry creditors. The appellant did not comply with the departmental notices both during assessment proceedings as well as during appellate proceedings. Submitting adjournment petition repeatedly without showing any reason or providing tentative date of submitting details with evidence cannot be anything but a ploy to withholding the disposal of the case for as long as possible. In the show cause letter dated 29.08.2024 and letter dated 03.09.2024 issued in response to adjournment petition filed by the appellant, it was clearly mentioned that this was the final opportunity to upload details but the appellant merely filed an adjournment petition once again without showing any reason or time-frame. The appellant's response is as good as non-compliance.

6.6 In view of this, I find no reason to interfere into the order of the Ld. AO and the same is upheld accordingly. Therefore, all the substantial grounds taken by the appellant are dismissed.

7. In the final result, order of the Ld. AO is upheld leading to simultaneous dismissal of the grounds of appeal taken by the appellant.”

6. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before this Tribunal.

7. We have heard the rival submissions and also gone through the facts of the case. In the assessment order, the Ld. AO has compared the purchases and the net addition to the sundry creditors during the year which has been added to the income of the assessee. The creditors



appearing in the books of account to the tune of Rs. 64,64,610/- are treated as not real and genuine and the expenditure claimed in the books of account as purchases is also treated as bogus/non-genuine. The assessee had filed the return for A.Y. 2015-16 and the total income was assessed at Rs. 2,48,08,760/- after making addition of Rs. 1,88,60,982/- on account of bogus purchases (liability shown as sundry creditors) as mentioned in the assessment order. The addition was made as the assessee failed to produce any evidence in support of the claim of purchases made and the existence of the sundry creditors could not be proved in spite of having been provided several opportunities. The Ld. CIT(A) also issued direction to reassess the income of the assessee for several assessment years. Accordingly, the case of the assessee was reopened. The Ld. AO has worked out the difference of Rs. 64,64,610/- as the difference between the sundry creditors as on 31.03.2013 and 31.03.2012 which are shown at Rs. 3,15,29,860/- and Rs. 2,50,65,250/- respectively, and has treated the same as the addition to sundry creditors. The corresponding purchases are shown at Rs. 6,96,55,859/- and Rs. 6,43,31,240/- respectively for the two years. The sales are shown at Rs. 9,26,16,611/- and Rs. 6,43,85,445/- respectively. There is no mention of any audit report or books of account being maintained by the assessee and even the names of the creditors which are held to be bogus have not been mentioned. The sundry creditors during the year could be those carried forward from the earlier year or new creditors, some of whom could have been paid during the year as regards their dues. It is not evident from the assessment order as to which all of the sundry creditors have been treated as not real and genuine and what is the nature of expenditure claimed in the books of account as purchases which have been treated



as bogus/not genuine. The assessee has made sales but even the details of the business i.e. whether trading or manufacturing has not been mentioned. In the FY 2014-15 relevant to the AY 2015-16, there were specific disallowances in the names of Shri Toko Kach, Neelam Tain, Gem Taje and M/s. Tagum Enterprises, the bills and vouchers for which were filed as additional evidence before the Ld. CIT(A). However, in the impugned assessment year, the assessee could not furnish the bills and vouchers, both during the assessment proceedings as well as during the appellate proceedings. The Ld. CIT(A) has reproduced the assessment order but has not discussed the merits of the case and has merely confirmed the finding of the Ld. AO.

8. Once the Ld. AO is of the view that sundry creditors are bogus, he ought to have identified such bogus creditors and if the purchases are also treated as bogus/non-genuine then either the details and nature of the purchases which are treated as bogus/non-genuine should have been identified or the books of account should have been rejected and profit should have been estimated. The Ld. AO has also not made any comparative study as to what is the normal profit in this line of business and if the purchases of Rs. 64,64,610/- are added to the gross profit shown by the assessee, then the gross profit rate goes up which figure has also not been justified. The assessee also did not make proper submission before the Ld. CIT(A). It was the submission of the Ld. AR that proper compliance could not be made before the Ld. CIT(A) as well as the Ld. AO, therefore, the matter may be remitted to the Ld. AO as the assessee was having evidence to justify the income shown. Neither the reasons for reopening have been mentioned in the assessment order nor the nature of the same is mentioned and the assessee has also questioned the reopening as bad in law. Therefore, we are of the



considered view that since proper representation was not made before the Ld. AO as well as the Ld. CIT(A), therefore, another opportunity may be allowed to the assessee to file necessary evidence before the Ld. AO. Hence, both the orders of the Ld. CIT(A) as well as the Ld. AO are hereby set aside with the direction that the assessee shall be provided an opportunity of being heard to file necessary evidence in support of the income shown and also file necessary confirmation of the sundry creditors. The Ld. AO shall thereafter pass a speaking order and in case the assessee fails to furnish any evidence, he shall be at liberty to make a best judgment assessment on the facts of the case and in accordance with law. This is imperative since on the basis of the findings of AY 2015-16, the assessments for other years have been reopened and the nature of addition on account of sundry creditors has also been worked out in a similar manner by considering the net addition to the sundry creditors during the year. Hence, the appeal for A.Y. 2013-14, is allowed for statistical purposes.

9. Since the issues in all other cases are similar, hence the orders of the Ld. CIT(A) as well as the Ld. AO for A.Ys. 2014-15, A.Y. 2016-17, A.Y. 2017-18, and A.Y. 2018-19 are also set aside and the Ld. AO is directed to frame the assessment orders de novo after allowing another opportunity of being heard to the assessee. Hence, the appeals in ITA Nos. 217, 218, 219, 220 and 221/Gau/2024 are allowed for statistical purposes.

10. The appeal in ITA No. 222/GTY/2024 relates to penalty u/s 270A of the Act while appeal in ITA No. 223/GTY/2024 relates to penalty u/s 271AAC of the Act for the addition made u/s 68 of the Act. Since the assessment orders relating to these two assessment years have been set



aside to be done afresh therefore, the consequential penalty orders are also hereby set aside to be done afresh in accordance with law after the reassessments are done again and in accordance with law.

11. In the result, the appeals filed by the assessee in ITA Nos. 217 to 223/GTY/2024 are allowed for statistical purposes.

Order pronounced on 21st March, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[Manomohan Das]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 21.03.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Jayanta Khaund, 300B, Tribeni Complex, Gaur Pandu Road, Adabari, Guwahati, Assam, 781012.**
2. **ACIT, CIR-1, Guwahati.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata