

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" (SMC), HYDERABAD**

BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER

ITA No.	Asst. Year	Appellant	Respondent
497/Hyd/18	2013-14	Sri Rajesh Kumar Malpani, Prop: M/s. Rajesh Silk House, HYDERABAD [PAN: AFJPM8763L]	Income Tax Officer, Ward-8(2), HYDERABAD
498/Hyd/18	2013-14	Smt. Sita Malpani, Prop: M/s. R.M. Silks, HYDERABAD [PAN: AKSPM4697H]	

For Assessee : Shri K. C. Devdas, AR
For Revenue : Shri Nilanjan Dey, DR

Date of Hearing : 23-07-2018
Date of Pronouncement : 03-08-2018

ORDER

These two appeals are filed by assessees against the common order of the Commissioner of Income Tax (Appeals)-2, (I/c), Hyderabad, dated 13-12-2017. The issue in these appeals is with reference to loans received by assessees to an extent of Rs. 26,45,000/- by Shri Rajesh Kumar Malpani and Rs. 9,40,000/- by Smt. Sita Malpani.

2. Briefly stated facts are that both the assessees are in the business of trading in textiles and have received unsecured loans from nine persons in the case of Shri Rajesh Kumar Malpani and from four persons in the case of Smt. Sita Malpani. On enquiry by Assessing Officer (AO) about the

credits of the above amount, assessee submitted that they are family members, income tax assessee themselves and have their own sources of income, advanced to assessee by way of cheques. In support, assessee have filed confirmation letters, copies of the bank accounts and their acknowledgments having filed returns along with respective statements of income and balance sheets, indicating the loans to assessee. AO noticed that in the same cases, there are cash deposits before issuance of cheques to assessee. AO issued summons to the parties. Assessee explained that three of the persons were in abroad and three of them are ladies who generally won't come out of their home and authorised persons may be permitted to represent them. One Mr. Roopesh Kumar Malpani and Nand Kishore Malpani in their HUF status have appeared before the AO. Even though statement of Mr. Roopesh Kumar Malpani has not been relied upon, AO relied on the (unsigned) statement of Mr. Nand Kishore Malpani to come to a conclusion that assessee failed to discharge the onus cast on them and added the above amounts as income of the above assessee.

3. Before the Ld.CIT(A), assessee have filed same documents, which were filed before the AO to contend that all credits are genuine, received from family members, received by way of cheques and also submitted that they are repaid in the later year. Ld.CIT(A), however, considered them as additional evidence and since there is no prayer under rule 46A, they were not admitted. Ld.CIT(A) also noted that AR has submitted

that AO issued summons to the unsecured creditors and three creditors were out of India and three of them appeared before the AO. As AO asked key questions and was coming to a conclusion without the consent of unsecured creditors, they did not even sign the statement. The other unsecured creditors are hesitating to come to the Income Tax office for cross-examination. It was further submitted that if there were cash deposits in the bank account of unsecured creditors before giving the cheques to assessees, then it should be assessed as income in the hands of unsecured creditors and not that of assessees. It was further contended that assessees are not bound to prove the source of the source and AO exceeded the jurisdiction by making in the said amounts as unexplained cash credits.

4. Ld.CIT(A), however, confirmed the action of AO and relied on various case law to state that AO made enquiries and has analysed the explanation or evidences furnished and accordingly, confirmed the action of AO.

5. It was contended that assessee received the amounts by way of cheques and all of them are family members, who have their own businesses/source of funds and three of them are employees in the software sector earning substantial incomes and therefore, the same cannot be doubted. It was further submitted that AO with a pre-judged mind has started questioning assessees. Therefore, Mr. Nand Kishore Malpani, did not sign the statement and others have not appeared. It

was submitted that the evidence on record certainly proves that those people have their own sources of funds. It was further submitted that in the case of Smt. Sita Malpani, an amount of Rs. 1,40,000/- received from Gulab Malpani is in fact a trade credit, wrongly received and referred to the explanation given before the AO (Paper Book page 42).

6. Ld.DR, however, reiterated the contentions of AO and submitted that Mr. Nand Kishore Malpani has appeared and refused to sign the statement, therefore, the creditworthiness of the parties was not established.

6.1. The DR was specifically asked whether any penalty u/s. 272A of the Act has been levied for not signing the statement for which Ld.DR submitted that no penalty was levied. Copy of the statement was placed on record which indicates that AO has not even administered the oath and has not taken any signature of assessee after administering the oath and there were no witnesses.

7. I have considered the rival contentions and perused the documents placed on record. It is true that assessees have furnished the confirmation letters, bank statements, acknowledgment of having filed returns along with enclosures before the AO. There is no dispute that all creditors are Income Tax assessees and they have their own sources of income. They are also regularly filing their returns offering incomes. Three of the creditors are employees as well. It is also

explained that because they are all family members, one person Mr. Roopesh Kumar Malpani who has done articles and has knowledge of accounting transactions and therefore most of the transactions are looked after by him on behalf of the family members. As seen from the submissions before the AO dt. 21-03-2016, an amount of Rs. 1,40,000/- received from Smt. Gulab Malpani, who is proprietor of M/s. Rajesh Silk House Exquisite, Ameer Pet, was wrongly received by M/s. R.M. Silks i.e., proprietary concern of assessee, Sita Malpani, whereas same should have been received by M/s. Rajesh Silks House Exquisite from M/s. Bhuvanageri Selections and these are transfer entries only. Even this factual aspect has not been considered by the AO and took this trade credit of Rs. 1,40,000/- also as cash credit in the case of Smt. Sita Malpani.

7.1. Coming to the so called statement of Shri Nand Kishore Malpani, copy of the unsigned statement placed on record by the DR, it indicates that even though 'oath administered' and 'oath taken' were typed in the beginning of a statement, there was no signature of deponent which was generally taken at the time of administering the oath and also the signature of officer who administered the oath. Generally, after asking few general questions, the signatures are taken on every page of the statement. Till the end of first page, there are no tricky questions. At the end of the first page, the deponent would not have any objection to sign the statement. Since there were no signatures of either deponent or the officer, at any stage or of witnesses on the copy of the statement filed, the veracity of the

statement itself is doubtful. When the party (deponent) refuses to sign the statement, the officer who records the statement has to certify that the party has refused to sign the statement, put his signature at the end of the statement. Penalty proceedings should have been initiated for refusal of the signing the statement. Nothing has been done by AO. Therefore, the statement on which both AO and CIT(A) relied upon cannot be accepted as genuine one.

7.2. Since the moneys were received from the family members, who are also assesseees of their own and have businesses/sources of income, I am of the opinion that assesseees have discharged their onus by providing the necessary confirmations. In case there are any cash deposits before issuance of cheques to assesseees, the same has to be assessed in their hands as they are having their own trade/business activities. But the deposit of cash alone does not prove anything against assesseees. Since assesseees discharged their onus of furnishing confirmation letters and as those people are family members and have creditworthiness, I direct the AO to accept the credits as genuine. The grounds are allowed.

8. In the result, both the appeals are allowed.

Order pronounced in the open court on 3rd August, 2018

Sd/-
(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 3rd August, 2018

TNMM

Copy to :

1. Shri Rajesh Kumar Malpani, Prop: M/s. Rajesh Silk House, C/o. Shyam Baheti & Associates, Chartered Accountants, 11-4-649/2/2, Sree Vilas Apartments, Flat No.2, Ground Floor, Lakdi Ka Pul, A.C. Guards, Hyderabad.

2. Smt Sita Malpani, Prop: M/s. R.M. Silks, C/o. Shyam Baheti & Associates, Chartered Accountants, 11-4-649/2/2, Sree Vilas Apartments, Flat No.2, Ground Floor, Lakdi Ka Pul, A.C. Guards, Hyderabad.

3. The Income Tax Officer, Ward-8(2), Hyderabad.

4. CIT (Appeals)-2, Hyderabad.

5. Pr.CIT-2, Hyderabad.

6. D.R. ITAT, Hyderabad.

7. Guard File.