

IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH : BANGALORE

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND  
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.2090/Bang/2016
Assessment year : 2010-11

Smt. H.S Vimala, No.19, 12 Deepa Complex, Papareddy Palya, Nagarabhavi 2 <sup>nd</sup> Stage, Bangalore-560 072.  PAN – ADXPV 6134 G.	Vs.	The Jt. Commissioner of Income-tax , Range-3(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Pranav Krishna, Advocate
Revenue by	:	Shri Suresh Battini, CIT (DR)

Date of hearing	:	03.06.2019
Date of Pronouncement	:	.06.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

The assessee has filed this appeal challenging the order dated 28/9/2016 passed by 1d CIT(A)-3, Bengaluru confirming the penalty of Rs.26.59 lakhs levied by JCIT u/s 271(E) of the Act for asst. year 2010-11.

2. The facts relating to the issue are stated in brief. The assessee is a cab operator and provides pick and drop services to employees of various multinational companies. The assessment for

asst. year 2010-11 was completed by the AO u/s 143(3) of the Act on 01/3/2013. During the course of asst. proceedings, it was noticed by the AO that the assessee has repaid loans to the tune of Rs.26.59 lakhs by way of cash, which was in contravention of the provision of sec.269T of the Act. Accordingly he referred the matter to the JCIT, who initiated penalty proceedings us 271E of the Act vide his notice dated 21/1/2015. It was noticed that the assessee has repaid loans by way of cash as per details given below:-

SN	Sl No. as indicated in Enclosure-III to clause 24 of From 3CD report	Name of the party	Amount
1.	29	Shri Veerabhadraiah	Rs.2,50,000
2.	27	Shri Sadashivaiah	Rs.4,75,000
3.	31	Smt. Gowramma	Rs.10,25,000
4	28	Smt. Spoorthi	Rs.3,09,102
4	30	Shri Basavaraj	Rs.6,00,000
		<b>Total</b>	<b>Rs.26,59,102</b>

4. In respect of amount repaid to Shri Veerabhadraiah, Shri Sadhashivaiah and Smt. Gowramma (Sl. No. 1 to 3) aggregating to Rs.17,50,000/-, it was submitted that the assessee had received the above said amounts as gifts from them in the earlier years and for want of gift deeds they were disclosed as loans in the earlier years. Accordingly these loans were brought forward during the year under consideration as opening balances. Subsequently,

during the year under consideration, these loans were closed by transferring them to capital account of the assessee, as the assessee received the gift deeds from them. It was submitted that the Tax Auditor has erroneously reported that the repayment of loans has been made by way of cash, while the loan accounts were actually closed by transferring them to the Capital Account by passing journal entries. Accordingly, it was submitted that the observations made by the Tax auditor is contrary to the facts available on record.

5. The above said explanations of the assessee were not acceptable to Id JCIT, who rejected the same with the following observations:-

*“6. The contention of the assessee is not accepted. The tax audit is required to be performed by a qualified Accountant u/s 44AB of the Income-tax Act, 1961. While preparing the 3CD report, the Chartered Accountants verify the books of accounts and bills / vouchers, material facts produced before him and only after thorough verification of the books, the audit report is recorded. Clause 24(b) of Form 3CD report specifies particulars of each repayment of loan or deposits in an amount exceeding the limit specified in section 269T made during the previous year. The auditors have clearly specified in Enclosure II to Clause 24(b) mentioning the name and amount repaid in cash. The assessee’s contention that the said sum represented the gifts received and the same supported by gift deeds are not acceptable. The transaction pertains to financial year 2009-10 relevant to asst. year 2010-11 and the gift deeds are dated 21.9.2010 i.e much after the closure of the financial year. The tax audit report is prepared by 30<sup>th</sup> September of the subsequent year.*

*The auditors are bound by law to prepare the tax audit report by 30<sup>th</sup> September. In the instant case the gift deeds were prepared by 21.9.2010 i.e, before the due date for preparation of tax audit report and the assessee is bound to furnish all the relevant information to the auditor for auditing. It is seen that the said information was not on record during audit only when the penalty proceedings were initiated, the assessee has come forward with a plea of gift deeds. In view of this, the contention of the assessee is not acceptable.”*

6. The ld CIT(A) also confirmed the same. Aggrieved, the assessee has filed this appeal before us.

7. We heard the parties on the above said three loans and perused the record. The assessee has furnished ledger account copies of the above said three parties in pages 32 to 34 of the paper book, which were submitted before Ld CIT(A). A perusal of the same would show that the impugned loans were shown as opening balance as on 01-04-2009 and the same have been closed by transferring it to the capital account through passing of journal entries. Hence, as per the books of accounts, the loans have not been repaid by way of cash as observed by the Tax auditor in the Tax audit report. In our view, the books of account, being the book of original entries, shall have more evidentiary value than the report given by the Tax auditor. Accordingly, we are of the view that the tax authorities are not justified in placing reliance on the report of tax auditor.

8. We notice that the assessee has submitted that she has received the amounts by way of gifts only in the earlier year and for want of "gift deeds, the same was shown as loans. The assessee has closed the loan accounts by transferring the same to her capital account on receipt of gift deeds, by passing journal entries. We notice that the tax authorities have rejected the above said explanations of the assessee by placing reliance on the observations made by the tax auditor in the tax audit report. We have already noticed that the ledger account copies furnished by the assessee before Ld CIT(A) supports the explanations given by the assessee.

9. We have noticed that the loans were taken from the above said three persons in the earlier years. The genuineness of loans has not been doubted in the earlier years by the assessing officer. The issue whether the repayment of loans by passing journal entries will be hit by the provisions of sec.269SS/269T was examined by Hon'ble Bombay High Court in the case of CIT vs. Triumph International Ltd (245 ITR 270). The Hon'ble Bombay High Court held that the acceptance/repayment of loans through journal entries would be hit by the provisions of sec. 269SS/269T of the Act. However, since the genuineness of the loans have not been accepted and since the settling claims by making journal entries is one of the recognized modes, the Hon'ble Bombay High Court held that the same shall constitute reasonable cause within the meaning of sec.273B of the Act.

10. In the instant case, the receipt of loans in the earlier years from the above said three parties have been accepted as genuine.

Though the gift deeds have been stated to be obtained belatedly, yet the gift entries have also been accepted by the tax authorities. Under these set of facts, the closure of loans by passing journal entries to the capital account of the assessee shall constitute reasonable cause within the meaning of sec.273B of the Act. We have noticed earlier that the ledger account copies of loans have been furnished by the assessee before Ld CIT(A) and not before the Ld JCIT. Since the Ld CIT(A) rejected the contentions of the assessee, he did not examine the ledger account copies of loans. Hence we are of the view that the explanations of the assessee need to be examined afresh by duly considering the books of accounts and the ledger accounts of loans in the light of propositions discussed above. Accordingly, we set aside the order passed by Ld CIT(A) in respect of loans repaid to Shri Veerabhadriah, Shri Sadashiviah and Smt. Gowramma and restore the same to the file of Ld JCIT for examining them afresh in the light of propositions discussed above and by duly considering the books of accounts and ledger account of loans.

11. With regard to the remaining two loans repaid to Smt. Spoorti and Sri Basavaraj, the assessee had submitted that these two persons are agriculturists and they do not have bank accounts. However, the JCIT noticed that these persons are residing in Bangalore as per the address given in voter ID issued by Election Commission of India. Hence he rejected the submissions of the assessee. We notice that the Ld CIT(A) has confirmed the penalty with the following observations:-

*“9. The appellant has raised ground no.13 to 17 with regard to the levy of penalty in respect of the refund of loan of Rs.9,09,102/- to Sri Basavaraj and Smt. Spoorthi. In this regard the appellant has claimed that the lenders, Sri Basavaraj and Smt Spoorthi were staying in a remote area and were not having any bank accounts. It is also stated that since the lenders were in urgent need of money and did not have any bank accounts, the appellant was compelled to repay the loan in cash. Taking this into consideration the appellant has claimed that there was a reasonable cause for making the repayment of loan in cash and hence, in view of the provisions of sections 273B of the Act, no penalty should be levied in the case.*

*9.1 The submissions made by the appellant are examined. The fact that the amount of Rs.9,09,102/- was repaid in cash to Mr. Basavaraj and Smt. Spoorthi is apparently not disputed by the appellant. The appellant claims that the amount was repaid in cash because the lenders are agriculturists residing in remote areas and did not have any bank account. However, considering the specific facts stated by the AO, the claim of the appellant is found to be incorrect.*

*9.2 In this regard, the AO has categorically stated that as per the identity card issued by the Election Commission of India the address of Smt. Spoorthi alias Smt. Rathna is stated to be at no.23, 31d Cross, D Arasu layout, Nagadevanahalli, Bangalore. The AO has also observed that the said area is well covered by banking facilities and therefore, the contention of the appellant that Smt. Spoorthi did not have a bank account cannot be accepted. Further, the appellant has also claimed that the lenders, Mr. Basavaraj and Smt. Spoorthi were in urgent need of money for which the*

*appellant had to make the payment in cash. However, considering the circumstantial facts of the case, the explanations furnished by the appellant are not found to be believable. It is difficult to accept the claim of the appellant that a person residing in an urban area like Bangalore and who has advanced loans of lakhs of rupees is not operating a bank account. Even if it is admitted that Mr. Basavaraj and Smt. Spoorthi are agriculturists, it doesn't necessarily imply and it cannot be accepted that the lenders are dealing only in cash for their day to day transactions and do not have any bank account. A person having credit worthiness to advance loan in the range of Rs.3 lakhs / Rs.6 lakhs and who reside in an urban area like Bangalore, cannot be expected not to have any bank account. In fact the appellant has not furnished any evidence to substantiate her claim in this regard.”*

12. A careful perusal of the order passed by Ld CIT(A) in respect of the remaining two loans would show that the assessee has given explanations that these two persons are agriculturists and they do not have bank accounts. However, the veracity of the said explanations has been rightly doubted by JCIT on the reasoning that these persons are residing in the City of Bangalore. However, we notice that the assessee could not substantiate her claim that these persons did not have bank accounts. Before us also, the assessee could not furnish any evidence to prove that both the lenders did not have any bank accounts. Under these set of facts, we do not find any reason to interfere with the order passed by Ld CIT(A) on these two loans.

13. In the result, the appeal filed by the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on **26<sup>th</sup> June, 2019.**

**Sd/-**  
**(N.V Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 26<sup>th</sup> June, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed  
before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S  
.....
4. Date on which the fair order is placed  
before the dictating Member .....
5. Date on which the fair order comes back to the Sr.  
P.S. ....
6. Date of uploading the order on  
website.....
7. If not uploaded, furnish the reason for doing so  
.....
8. Date on which the file goes to the Bench Clerk  
.....
9. Date on which order goes for Xerox &  
endorsement.....
10. Date on which the file goes to the Head Clerk  
.....
11. The date on which the file goes to the Assistant  
Registrar for signature on the order  
.....
12. The date on which the file goes to dispatch section for  
dispatch of the Tribunal Order .....
13. Date of Despatch of Order.  
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