

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

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.111 & 112/Bang/2017
Assessment year : 2008-09

Sri Gurulingappa Bhimsha Kalshetty, No.78, KIADB Industrial Area, Gulbarga-585 104. PAN – APVPK 6644 N	Vs.	The Jt. Commissioner of Income-tax Gulbarga Range, Gulbarga.
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V Ravishankar, Advocate
Respondent by	:	Shri R.N Siddappaji, Addl. CIT

Date of hearing	:	11.07.2019
Date of Pronouncement	:	31.07.2019

ORDER

Per B.R Baskaran, Accountant Member

Both the appeals filed by the assessee are directed against the orders passed by Ld CIT(A), Gulbarga confirming the penalty levied u/s 271D and 271E of the Act.

2. We heard the parties and perused the record. The assessee is running a Dall mill in the name of M/s Gurudatta Industries at Gulbarga. The AO noticed that the assessee has received loans from M/s Gurulingappa B Kalshetty (HUF) and also repaid the same in part in cash in violation of provisions of sec.269SS and 269T of the Act. Accordingly he referred the matter to Joint

Commissioner of Income tax, who initiated penalty proceedings u/s 271D and 271E of the Act.

3. Before Ld JCIT, the assessee submitted that HUF of the assessee is having agricultural lands and he was receiving his share of agricultural income every year which was credited to the account of Gurulingappa B Kalshetty (HUF). During the year under consideration, the assessee received Rs.1,22,730/- as his share of agricultural income and the same is shown as cash received from HUF. The assessee has claimed to have paid a sum of Rs.38,825/- towards agricultural expenses and debited the account of his HUF. It was submitted that the above said receipt and payment should not be considered as loan transactions in violation of sec.269SS and 269T of the Act. The Ld JCIT was not convinced with the said explanations of the assessee and accordingly levied penalty of Rs.1,22,730/- u/s 271D of the Act for accepting loan in violation of sec.269SS of the Act. Similarly he levied a penalty of Rs.38,835/- u/s 269T of the Act for repaying loan in violation of sec.269T of the Act. The Ld CIT(A) also confirmed the same.

4. Before us, the Ld A.R submitted that the HUF has grown Toor dall in its lands and the same was supplied to the assessee, since the assessee is running a Dall Mill. The Toor dall was purchased from the HUF to the tune of Rs.1,22,730/- on credit basis and hence the account of HUF was credited by that amount. Out of the said running account, a sum of Rs.38,835/- was repaid. Accordingly he submitted that the transactions with HUF were purchase transactions and not loan transactions. Accordingly he

submitted that the provisions of sec.269SS and 269T shall not apply to these transactions. In support of this submissions, the Ld A.R furnished copies of cash book to show that the assessee has debited Purchases account with Rs.1,22,730/-

5. We heard Ld D.R and perused the record. We notice that the assessee is offering new explanations before us. The copy of cash book furnished by the assessee would show that the assessee has debited purchases account with the above said amount of Rs.1,22,730/- and has given corresponding credit to HUF account. Hence, as per the cash book, the credit of Rs.1,22,730/- made in the account of HUF represents purchase transaction. Since the purchase transaction was entered in cash book, it has been reflected as Cash receipt in the account of HUF, as per the software program. There should not be any dispute that the purchase transactions entered on credit basis would not attract the provisions of sec.269SS, since the same cannot be considered as loan transactions.

6. Since the assessee has offered new explanations before us, we are of the view that the issue urged in both the appeals requires fresh examination at the end of Ld JCIT in the light of new explanations. Accordingly, we set aside the orders passed by Ld CIT(A) in both the appeals and restore all the issues to the file of Ld JCIT for examining them afresh in the light of new explanations and evidences furnished by the assessee.

7. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the Open Court on 31st **July, 2019**.

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 31st July, 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.