

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

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

ITA No.1794/Bang/2018
Assessment year : 2013-14

M/s Aishwarya Nano City, No.HIG 98, Kurani Complex, Navanagar, Hubli.	Vs.	The Asst. Commissioner of Income-tax, Range-1, Hubli.
APPELLANT		RESPONDENT

Appellant by	:	Shri S Ramasubramaniam, C.A
Respondent by	:	Shri M Narashima Raju, J.C.I.T (DR)

Date of hearing	:	05.12.2019
Date of Pronouncement	:	.12.2019

ORDER

Per B.R Baskaran, Accountant Member :

The assessee has filed this appeal challenging the order dated 19/3/2018 passed by Id CIT(A), Hubli confirming the penalty of 14.60 lakhs levied by the AO u/s 271D of the Act for violation of provisions of sec. 269SS of the Act.

2. At the outset the Id counsel for the assessee submitted that the assessee has made detailed submissions before the tax authorities explaining the business necessity for taking loan by way of cash. However the tax authorities have not appreciated the same and, in particular, the Id CIT(A) has rejected them by making general observations without appreciating them in proper

perspective. Accordingly he prayed that the matter may be restored to the file of Id CIT(A) for properly appreciating the explanations of the assessee and taking appropriate decision.

3. The Id DR agreed with the prayer put forth by Id AR.

4. We heard the rival contentions and perused the record. We noticed that the Id CIT(A) has dismissed the appeal of the assessee by making following observations :-

“4.2 In the course of appellate proceedings, the assessee submitted a chart showing dates on which cash loans were accepted along with a corresponding explanation for accepting the loans in cash. An examination of the same shows that the reason given for accepting cash loans is that he had insufficient balance in his bank account. The cash loan of Rs.2,50,000/- taken on Dt.15.12.2012, and Rs.3,10,000/- on 22&23-12-2012, was said to be for making payments vide cheques towards Megha Project. The cash loan of Rs.1,50,000/- taken on 07-12-2012, is said to be for emergency expenses, which are not specified. The cash loan of Rs.2,50,000/- taken on 03-04-2012, was said to have been taken for making advances towards land purchases, and the cash loan of Rs.2,50,000/- taken on 25-07-2012 was said to be for meeting daily expenditure of office', which is not specified. The

cash loan taken on 28.01.2013 of Rs.2,50,000/- was said to consist of bank credits and not cash loans. The assessee has alternatively pleaded that the AO should have added the amounts as undisclosed income U/s.68 of the I.T. Act, 1961.

4.3 The submissions of the assessee are examined and it is seen that the common thread running through them is that it is on account of low balance in his bank account that he has taken these cash loans. The exact nature of need and the persons to whom such payments are made is not clear. The payments are said to be made via cheques to Megha Projects, who I presume is another real estate entity, and the identity of the others is unclear.

5. There is no dispute in the fact that loans are usually taken when there is a requirement for additional funds and not when there is excess or ITA No.CIT(A)/Hubli/10158/2016-17 sufficient funds. A reasonable cause for taking cash loans, as discussed in the penalty order, is usually due to non availability of banking facilities or lack of access to banking facilities, etc. However, in the assessee's case it appears to be due to need for funds, which were deposited into a bank to cover cheque payments, as claimed for an amount of Rs.5,60,000/-. The purpose of other cash loans is for

making payments when he did not have sufficient funds. The assessee also submitted that some cash payments that were accepted as cash payments in the course of assessment proceedings were not cash payments but direct deposits, but no proof or details of-such claims were submitted. The assessee has also failed to submit any details of the payments or his claims in the course of either assessment proceedings or penalty proceedings or appellate proceedings.

6. Section 271D imposes penalty for violation of provisions of section 269SS of the I.T. Act, 1961, by accepting loans or deposits in cash. The assessee has admittedly accepted the fact that he has violated the provisions of section 269SS of the I.T.Act, 1961, in the course of assessment proceedings and has not submitted any reasonable cause or extenuating circumstances, as to why the loans had to be accepted by him in cash.”

5. A perusal of the documents furnished in the paper book would show that the assessee has furnished copies of cash book in order to prove the claim of urgent business necessity which compelled it to borrow money by way of cash. We noticed that the Id CIT(A) has not critically examined the explanations furnished by the assessee and also evidences furnished before him. Under these circumstances, we are of the view that there is merit in the prayer

of the assessee. Accordingly we set aside the order passed by Id CIT(A) and restore all the issues to his file for examining them afresh after affording adequate opportunity of being heard to the assessee.

6. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on **December, 2019.**

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, December, 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. Dictation note enclosed
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk
12. The date on which the file goes to the Assistant Registrar for signature on the order
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
14. Date of Despatch of Order.
14. Dictation note enclosed