

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC, "C" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER**

ITA No.1673/Bang/2019
Assessment year : 2015-16

Mrs. KN Aparna, Shivashankar Nivas, 1390/34, South End A Main Road, Jayanagar, Bengaluru-560 069.  PAN – ABCPA 3502 E	Vs.	The Asst. Commissioner of Income-tax, Central Circle-1(2), Bengaluru.
APPELLANT		RESPONDENT

Revenue by	:	Shri G.S Prashanth, C.A
Assessee by	:	Shri Ganesh R Ghale, Advocate Standing Counsel for the Dept.

Date of hearing	:	27.11.2019
Date of Pronouncement	:	19.12.2019

**ORDER**

*Per B.R Baskaran, Accountant Member :*

The assessee has filed this appeal challenging the order dated 23-05-2019 passed by Ld CIT(A)-11, Bengaluru and it relates to the assessment year 2015-16. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.30.00 lakhs made by the AO u/s 68 of the Act.

2. The facts relating to the above said issue are stated in brief. The revenue carried out search and seizure operations in the hands

of M/s Rajatha Jewels u/s 132 of the Act on 28-01-2016. Consequent thereto, the present assessment of the assessee herein was completed by the AO u/s 153C r.w.s. 153A r.w.s 143(3) of the Act. The AO noticed that the assessee has deposited cash aggregating to Rs.30.00 lakhs in her bank account maintained with Kotak Mahindra Bank. The AO asked the assessee to explain the sources for the deposits so made. The assessee submitted that she had received Rs.12.00 lakhs from her brother Shri Abhilash and Rs.4.00 lakhs from her mother Smt. Subhashini. Both the amounts were used to make cash deposits into the bank account. The remaining amount of Rs.14.00 lakhs was explained as her earlier withdrawals made from banks. The assessee furnished confirmation letter obtained from Shri Abhilash, statement of his total income and income tax return copies of Smt. Subhashini to substantiate her claim. The AO, however, held that the assessee has not substantiated her explanations with corroborative evidences. With regard to the claim of deposit of money out of past withdrawals, the AO observed that the assessee has not clarified the same with details of earlier withdrawals. Accordingly, the AO added the above said amount of Rs.30.00 lakhs as unexplained cash credit u/s 68 of the Act. The Ld CIT(A) also confirmed the same.

3. The Ld A.R submitted that the assessee has furnished confirmation letters along with certain documents to prove the claim of receipt of cash from Shri Abhilash and Smt. Subhashini. He invited my attention to the paper book and submitted that the Shri Abhilash has confirmed that he has given the amount of

Rs.12.00 lakhs to the assessee, being his sister. He submitted that Shri Abhilash is declaring total income of Rs.26.12 lakhs and is also a director in the company named M/s Dynarx Technologies India Limited. He submitted that Shri Abhilash has withdrawn money from the above said company, which has also been confirmed by the above said company. Accordingly he submitted that the credit worthiness and identity of Shri Abhilash was proved. He submitted that the above said amount was paid by him to the assessee in cash, since she was his sister. He submitted that there is no reason to doubt the genuineness of explanations furnished by the assessee. He further submitted that Smt. Subhashini is also assessed to tax and she has declared a total income of Rs.28.25 lakhs in AY 2014-15. Accordingly he submitted that there is no reason to reject the claim of receipt of money from Smt. Subhashini, mother of the assessee. With regard to the claim of deposit of money out of past cash withdrawals, the Ld A.R submitted that the assessee has prepared a cash flow statement to substantiate the said claim. The Ld A.R also contended that the bank pass book cannot be treated as “books” within the meaning of sec.68 of the Act and hence the AO could not have made the impugned addition. In this regard, he placed his reliance on the decision rendered by Bangalore SMC bench in the case of Smt. Manjushree vs. ITO (ITA No.374/Bang/2017 dated 28.04.2017).

4. The Ld D.R, on the contrary, submitted that the assessee has failed to discharge the primary onus placed upon her u/s 68 of the Act. He submitted that the assessee has furnished only confirmation letter obtained from her brother, statement of

income/income tax return of brother & mother. He submitted that the assessee has not furnished confirmation letter obtained from her mother before the AO. He further submitted that there is no proof for receipt as well as for repayment of money from both the persons. Accordingly he submitted that the addition should be sustained.

5. I heard rival contentions and perused the record. It is well settled proposition that the initial burden to prove the cash credits has been placed under the shoulders of the assessee u/s 68 of the Act. The assessee has to prove three main ingredients viz., the identity of the creditor, credit worthiness of the creditor and the genuineness of the transactions. In the instant case, it is the claim of the assessee that she has received Rs.12.00 lakhs and Rs.4.00 lakhs respectively from her brother and mother. The copies of Statement of total income/income tax returns were furnished to show that both the above said persons are having credit worthiness for make the above said payments. I have noticed earlier, both are assessed to income tax and are declaring total income exceeding Rs.25.00 lakhs. Since both the persons are blood relations, the transactions have been entered through cash. Besides the above, Shri Abhilash is a director of a company and the said company has also confirmed the transactions entered between it and Shri Abhilash. Though the assessee furnished copies of income tax returns of Smt. Subhashini (mother) before the AO, a specific confirmation letter was not filed. Nevertheless, the documents referred above would show that the identity of the creditors was not doubted and the credit worthiness of both the creditors, in my view,

has been proved. Since the transactions were between blood relatives, in the facts of this case, the genuineness cannot be doubted. Hence I am of the view that the addition of Rs.12.00 lakhs and Rs.4.00 lakhs referred above was not justified. Accordingly I set aside the order passed by Ld CIT(A) on these two additions and direct the AO to delete both the additions.

6. With regard to the remaining deposit of Rs.14.00 lakhs, the assessee has submitted that she has used her past withdrawals for making the above deposits. The Ld A.R submitted that the assessee is also having good income and her past savings were also used to make the above said deposits. He submitted that the assessee has prepared a cash flow statement to substantiate her contentions. I notice that the assessing officer has rejected the above said explanations of the assessee without examining the cash flow statement of the assessee. There is no bar for depositing cash withdrawals again into the bank account. When the assessee has not spent the cash withdrawals, it is quite natural to deposit the said amount into the bank account. In order to reject the above said claim of the assessee, it is necessary to show that the assessee has spent the amount so withdrawn. Accordingly I am of the view that the addition of Rs.14.00 lakhs require fresh examination at the end of the AO. Accordingly I set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining the claim of the assessee with the statement of cash withdrawal in the light of discussions made supra.

7. In the result, the appeal of the assessee is treated as partly allowed.

Order pronounced in the Open Court on **19<sup>th</sup> December, 2019.**

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

Bangalore,  
Dated, 19<sup>th</sup> 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 .....