

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

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.1034/Bang/2019

Assessment year : 2010-11

Smt. Kavitha Shivanand, 'Nanda Gokula', No.49, 1 st Cross, Opp. Patalamma Temple, Uttarahalli – Kengeri Main Road, Banashankari 5 th Stage, Bengaluru-560 061. PAN – CKFPS 9027 Q	Vs.	The Income-tax Officer, Ward-4(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri V Chandrashekar, Advocate
Respondent by	:	Shri Ganesh R Ghale, Advocate, Standing counsel for the Dept.,

Date of hearing	:	06.11.2019
Date of Pronouncement	:	.02.2020

ORDER

Per B.R Baskaran, Accountant Member :

The assessee has filed this appeal challenging the order dated 07-03-2019 passed by Ld CIT(A)-10, Bengaluru and it relates to the assessment year 2010-11. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.26,10,000/- made by the AO u/s 68 of the Act.

2. The facts relating to the issue are discussed in brief. The assessee herein filed her return of income for the year under consideration declaring a total income of Rs.2,04,000/-. During the course of scrutiny proceedings, the AO noticed that the assessee has made cash deposits aggregating to Rs.26,10,000/- in her SB account maintained with State Bank of Hyderabad. When questioned about the sources of the deposits so made, the assessee explained that she received a sum of Rs.25.00 lakhs as advance towards sale of a property to her brother. It was further submitted that the said property was acquired by her through family settlement. It was further submitted that there were certain confusions between the assessee and her brother and hence the transaction could not materialise. Hence the said amount was returned back. It was submitted that her brother Shri Harish is the proprietor of M/s Shree Saraswathi Iron Foundaries and he shall provide any further information.

3. The AO noticed that the assessee did not furnish any other information besides providing above said explanation. Accordingly he held that the assessee has not discharged her burden placed upon her shoulder u/s 68 of the Act. Accordingly the AO assessed the above said amount of Rs.26,10,000/- as income of the assessee u/s 68 of the Act. The Ld CIT(A) also concurred with the view taken by the AO and accordingly confirmed the addition.

4. The Ld A.R submitted that the assessee has receive the impugned amount of Rs.25.00 lakhs from her brother Shri Harish, who is the proprietor of M/s Shree Saraswathi Iron Foundaries in

his HUF capacity. He submitted that the assessee has furnished a confirmation letter obtained from Shri Harish and further provided the Permanent Account Number of Shri A Harish (HUF). He submitted that Shri Harish (HUF), the proprietor of M/s Shree Saraswathi Iron Foundaries is regularly assessed to income tax. He submitted that the remaining amount of Rs.1.10 lakhs was made out of her past savings. Accordingly he submitted that the assessee has discharged her burden placed on her u/s 68 of the Act. Accordingly he prayed that the impugned addition may kindly be deleted.

5. The Ld D.R, on the contrary, submitted that the assessee has not furnished any document to support the claim of receipt of advance money towards sale of property. He submitted that the assessee has furnished a confirmation letter obtained from her brother, which states that he has paid sum of Rs.25.00 lakhs to the assessee. He submitted that the assessee has not proved the genuineness of transaction and the credit worthiness of the creditor.

6. I heard rival contentions and perused the record. The claim of the assessee is that she has received a sum of Rs.25.00 lakhs from her brother named Shri A Harish. It is stated that Shri A Harish (HUF) is the proprietor of M/s Shree Saraswathi Iron Foundaries and the above said payment of Rs.25.00 lakhs was made from the books/accounts of M/s Shree Saraswathi Iron Foundaries. Though the assessing officer has stated that the assessee has not furnished property documents etc., yet, in my

view, what is relevant is – whether the sum of Rs.25.00 lakhs was given by A Harish (HUF) through M/s Shree Saraswathi Iron Foundaries or not?. If the amount of Rs.25.00 lakhs was given by the above said concern from out of its books, then the question of making any addition should not arise. This is so because, (a) the identity of creditor is not in dispute since he is the brother of the assessee; (b) genuineness and creditworthiness could not be doubted with, if the above said payment is accounted in the books of M/s Shree Saraswathi Iron Foundaries. Further it is assessed to income tax under PAN No.AAFHA3839L.

7. Accordingly, the bench asked the Ld A.R to furnish ledger account copy from the books of M/s Shree Saraswathi Iron Foundaries in order to prove that the payment of Rs.25.00 lakhs was made from out of its books. Accordingly, the assessee has furnished copy of Ledger account maintained in the name of the assessee by M/s Saraswathi Iron Foundary. A perusal of the ledger account copy would show that the assessee has been paid a sum of Rs.25.00 lakhs during the year under consideration. Under these set of facts, the addition of Rs.25.00 lakhs is not warranted. However, we notice that there was no occasion for the AO to verify the ledger account copy furnished before the Tribunal. Hence, for the limited purpose of examining the ledger account copy, I restore this issue to the file of the assessing officer. After satisfying himself with the claim of the assessee by examining the above said document, the AO may delete the addition of Rs.25.00 lakhs.

8. The remaining amount of addition is Rs.1.10 lakhs and the assessee claimed the same to be her past savings. Considering the fact that the assessee is assessed to income-tax, I am of the view that there is no reason to doubt her explanation with regard to the amount of Rs.1.10 lakh. Accordingly I set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition of Rs.1.10 lakh.

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

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

Order pronounced in the open court on **3rd February, 2020.**

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

Bangalore,
Dated, the 3rd February, 2020.
/Vms/

Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar ITAT, Bangalore