

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C”BENCH: BANGALORE**

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

ITA No.2240/Bang/2019
AssessmentYear:2014-15

M/s. Media 360 Degree Services India Pvt. Ltd. # 16, 1 <sup>st</sup> Floor, Above Bajaj Showroom Opp. Allied Blenders, Near Nagasandra Metro Station Bangalore-560 070  <b>PAN NO :AAGCM3019E</b>	<b>Vs.</b>	ITO Ward-4(1)(2) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Mallaha Rao K., A.R.
<b>Respondent by</b>	:	Smt. R. Premi, D.R.

Date of Hearing	:	25.11.2020
Date of Pronouncement	:	25.11.2020

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The appeal filed by the assessee is directed against the order dated 3.9.2019 passed by Ld. CIT(A)-9, Bengaluru and it relates to the assessment year 2014-15. The assessee is aggrieved by the decision of Ld. CIT(A) in partially confirming the addition made by the A.O. u/s 68 of the Income-tax Act,1961 [‘the Act’ for short].

2. The facts relating to the issue are stated in brief. The assessee is engaged in advertisement agency business. During the course of assessment proceedings, the A.O. noticed that the

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assessee has shown unsecured loans to the tune of Rs.49.32 lakhs. Out of the above said loans, the assessee has received a sum of Rs.19.50 lakhs from a person named Shri Prabhulingappa, who is the father of Managing Director of the company. It was noticed that the loans were received in cash. The assessee furnished confirmation letter obtained from Shri Prabhulingappa, wherein he had confirmed that he has given a sum of Rs.19 lakhs to the assessee, even though the amount received from Shri Prabhulingappa was Rs.19.50 lakhs. The A.O. also noticed that the signature available in the confirmation letter did not tally with the signature found in PAN card. Accordingly, he rejected the confirmation letter. Since the assessee has failed to prove the cash credit loan of Rs.19.50 lakhs, the A.O. assessed the same as income of the assessee u/s 68 of the Act.

3. In the appellate proceedings, the assessee submitted before Ld. CIT(A) that Shri Prabhulingappa is holding agricultural land and earned agricultural income. He submitted that the impugned loan was given out of his agricultural income. The assessee also furnished the details of land holdings. The Ld. CIT(A) noticed that the lands were held by Shri Prabhulingappa, his wife and his brother. It was submitted that the brother of Shri Prabhulingappa has given GPA to the assessee. The Ld. CIT(A) examined the details, the nature of crops grown and accordingly estimated the agricultural income from the land hold by the above said 3 persons. The Ld CIT(A) allocated the same between these 3 persons in the ratio of their land holding. After considering the probable expenses of the assessee, the Ld. CIT(A) took the view that the sources have been explained only to the extent of Rs.6.52 lakhs. Accordingly, he sustained the addition to the extent of Rs.12.98 lakhs. Still aggrieved, the assessee is in appeal before us.

4. The Ld. A.R. submitted that the assessee has repaid the loan taken from Shri Prabhulingappa by way of cheque in the subsequent years which goes to show that the amount of Rs.19.50 lakhs represent genuine loan taken by the assessee. He further submitted that Shri Prabhulingappa is basically an agriculturist and hence, did not file return of income. Subsequent to the assessment order, Shri Prabhulingappa has filed his return of income, wherein agricultural income earned by him was duly declared. He submitted that Shri Prabhulingappa is an agriculturalist for the past 40 years and the impugned loan amount of Rs.19.50 lakhs was given to the assessee company out of his accumulated savings. Accordingly, he submitted that the tax authorities are not justified in disbelieving the loan transactions. The Ld. A.R. submitted that the assessee has furnished copies of returns of income of Shri Prabhulingappa in the paper book, which are in the nature of additional evidences. Accordingly, he prayed that the matter may be restored to the file of the A.O. for examining it afresh.

5. The Ld. D.R., on the contrary, submitted that the factum of filing of return of income by Shri Prabhulingappa has been held to be an afterthought by Ld. CIT(A). She further submitted that the Ld. CIT(A) has analysed the facts relating to the issue and has accordingly estimated the probable savings that would be available with Shri Prabhulingappa. She submitted that even though the brother of Shri Prabhulingappa has given power of attorney to him, it cannot be presumed that the agricultural income belonging to Shri Umesh, brother of Shri Prabhulingappa was not given to Shri Umesh. Accordingly, she submitted that the Ld CIT(A) has rightly allocated the agricultural income between the owners of the land.

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There is no proof that Shri Prabhulingappa has enjoyed entire agricultural income. Accordingly the Ld DR submitted that the order passed by Ld. CIT(A) should not be interfered with.

6. We heard the rival contentions and perused the record. We notice that the arguments advanced before us by the assessee were also advanced before Ld. CIT(A). We notice that the Ld. CIT(A) has considered all the arguments of the assessee and accordingly rendered his decision. For the sake of convenience, we extract below the decision rendered by Ld. CIT(A).:

*“7 When enquired about why the money was received in cash, the appellant sought that there was business expediency. On further enquiry about the sources of the money, the appellant submitted that Mr. Prabhulingappa has agricultural income from cultivation of land which belongs to him, his wife and his two brothers. Later he claimed that he has rights to cultivation and keep income arising out of it with him for lands belonging to him, his wife and his younger brother Shri. Umesh K N. Shri. Prabhulingappa has submitted a copy of GPA executed by Shri. Umesh K.N upon him giving him the right to cultivate the said land. It is also claimed that Shri. Prabhulingappa's brothers and his wife have given right to keep earnings with him.*

*8. The total area of land is 16.88 acres. The prime produce from the lands is areca nuts. Shri. Prabhulingappa has claimed a gross total receipt of 30-50 lakhs per annum from the cultivation of areca nut over the land. He has further claimed that in the financial year 2013-14 he had obtained Rs. 25,71,44<sup>8</sup>1 from sale of areca nuts and around 9 lakhs from sale of other produce like banana, mango, chikku, betel leaf, coconut etc. Therefore, the total income from agriculture in the Financial Year 2013-14 is claimed to be Rs. 34,71,4481- from 16.88 acres.*

*9. The claim of the appellant is verified from various sources on internet. It is found that the average yield of areca nut per acre in Karnataka is around 8 quintals. The average sale price for areca nuts during Financial Year 2013-14 is around Rs. 25,000 per quintal. Therefore, the gross receipt from a total land of 16.88 acres comes to around 33.76 lakhs. Therefore, the gross receipt claimed by Shri. Prabhulingappa is found to be acceptable.*

10. However, the Net agricultural income is not worked out by the appellants. I find that at least 50% will be the expenditure

11. However as claimed by Shri. Prabhulingappa, the income is from total area of 16.88 acres of land. Although Shri. Umesh K. N (brother of Shri. Prabhulingappa) has executed GPA in favour of Shri. Prabhulingappa, it is not mentioned anywhere in the GPA that Shri. Umesh K N is transferring rights over income from the same land to Shri. Prabhulingappa. In view of this, I find that in absence of distinct dealing of monetary terms, it cannot be inferred that the income accruing from the share of land of Shri. Umesh K.N is to be considered in the hands of Shri. Prabhulingappa.

12. In view of the above the share of land of Shri. Prabhulingappa and others and their share of income are to be considered separately. Incomes from the produce are accruing in the hands of related parties are as below:

Name of holder and relation with Prabhulingappa KN	Area of land	Proportionate income from sale of areca nut	Proportionate income from sale of other produces
Prabhulingappa KN	6.72 acres	Rs. 10,23,704	Rs. 3,58,294
Smt. Prathima(Wife)	4.06 acres	Rs. 6,18,488	Rs. 2,16,469
Umesh KN (Brother)	6.10 acres	Rs.9,29,256	Rs.3,25,237
Total	16.88 acres	Rs.25,71,448	Rs.9,00,000

13. However, it is observed that despite having such high receipts from agricultural activities, he had not filed his return of income within the time prescribed.

14. He filed his return of income only during the assessment proceedings in the case of M/s. Media 360 Degree Services India Private Limited were started. On being enquired about why he did not file his return earlier, he explained that since he was earning agricultural income only, which is exempt in nature, he was under impression that there was no liability to file return upon him.

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15. *The argument presented by Shri. Prabhulingappa seems to be an afterthought as he has been in agricultural business for long time. Further his son Shri. Mallikarjuna P.G. is a businessman having good turnover from business. In such situation being unaware of the very basics of the laws of the land and not knowing that there is a requirement to file return even if the income is earned from agricultural activities is neither justified nor a satisfactory explanation. Further, ignorance of law is not an excuse. Further the appellant has failed to explain that under what business expediency he had to take such huge cash from his father on different occasions. The same transactions could have been taken place by banking channels.*

16. *In view of the above, I find that firstly the loan should have been given via banking channels which has not happened in this case. Further, out of the given income from agriculture of areca nuts and others, the appellants share is only Rs. 13,81,998/-. Rest of the income of Rs. 20,89,450/- is accrued in the hands of Shri. Prabhulingappa's wife and his brothers. It is also seen that agricultural income is the only source of income for Shri. Prabhulingappa.*

17. *The Net agricultural income worked out will be 50% Rs. 13,81,998[approx. 6.92 Lacs]. Further, the entire amount of Rs. 13,81,998/- cannot be saved by him. Assuming that a minimum of Rs. 20,000 per month is required for his basic sustenance, Hence, an amount of Rs. 2,40,000(20,000\*12) is deducted as the minimum amount that would have been spent by him on his sustenance. Therefore, the savings left with him is the spare money left after deducting his expenses which amounts to Rs. 4,52,000 (Rs. 6,92,000— Rs. 2,40,000). Similarly, some saving from earlier year may be available. In view of above, this is estimated to be Rs. 2,00,000.*

18. *In the facts and circumstances of the case, it is concluded that Shri. Prabhulingappa is left with only Rs. 6,52,000 savings which he could lend to his son. The ore, out of the total unsecured loans of Rs. 19,50,000 claimed to be given to Shri Mallikarjuna P.G. by Shri Prabhulingappa, Rs.6,52,000 is allowed and the addition made by the AO is sustained to the extent of Rs.12,98,000.”*

7. We notice that the Ld. CIT(A) has analysed entire facts relating to the case, considered the arguments of the assessee and

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has estimated the agricultural income in a meticulous way. We notice that no material was placed before us to show that the estimate made by Ld CIT(A) is not correct. Instead, the assessee is placing reliance on the returns of income filed by Shri Prabhulingappa subsequent to passing of assessment order, which has been held to be an afterthought by Ld CTI(A). We are of the view that the Ld CIT(A) was justified in taking the above said view in the facts and circumstances of the case.

8. The Ld A.R submitted that the assessee has repaid the loan taken from Shri Prabhulingappa subsequently. It is well settled principle that the repayment of cash credit would not prove the genuineness of cash credit. It is the responsibility of the assessee to prove three main ingredients, viz., identity of the creditor, credit worthiness of creditor and genuineness of the transaction. In the instant case, the assessee has failed to prove the credit worthiness fully and also the genuineness of the transactions. Accordingly, in the facts and circumstances of the case, we are of the view that the Ld CIT(A) has taken a reasonable view of the matter. Hence, we do not find any infirmity in the decision rendered by Ld. CIT(A) and accordingly uphold the same.

9. In the result, the appeal filed by the assessee is dismissed.  
Order pronounced in the open court on 25<sup>th</sup> Nov, 2020.

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

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

Bangalore,  
Dated 25<sup>th</sup> Nov, 2020.  
VG/SPS

**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.