

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER

&

SRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 312/Kol/2021

Assessment Year: 2017-18

M/s. Coastal Fertilisers Ltd.....Appellant
[PAN: AAACH 6567 J]

Vs.

ITO, Ward-15(1), Kolkata.....Respondent

Appearances by:

Sh. S.K. Tulsiyan, Adv. &
Smt. Puja Somani, CA, appeared on behalf of the Assessee.

Sh. Biswanath Das, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : May 5th, 2022

Date of pronouncing the order : June 22nd, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Id. "CIT(A)"] dated 17.08.2021 arising out of the assessment order framed u/s 143(3) of the Act dated 31.12.2019.

2. The assessee is in appeal before the Tribunal raising the following grounds:

“1. That, on the facts and in the circumstances of the case, the Ld. C.I.T.(A), NFAC erred in law in upholding the addition of Rs.94,50,000/- in the garb of unexplained cash credit u/s 68 of the Act on the alleged ground of the assessee’s failure to establish the generation of cash deposited in the bank in high denomination during the demonetization period when he himself found no unusual or sudden deposit of cash indicating inconsistency, but rather found nexus with total cash withdrawal of Rs. 1,02,75,000/- from the bank prior to demonetization period.

2. That, the Ld. C.I.T.(A) further erred in upholding the addition of Rs.94,50,000/- when the income by way of sales realization of shares stood deposited in the bank account has been accepted by the Ld. A.O. to be the income of the assessee and books of accounts have not been rejected u/s 145(3) of the Act, which is sine qua non for invoking provisions of sec.68 of the Act and hence the addition of part of the same amount once again u/s 68 of the Act would tantamount to double taxation of the same income.

3. That, the Ld. C.I.T.(A) further erred in upholding the addition of Rs.94,50,000/- u/s 68 of the Act in spite of the fact that the cash withdrawals from the bank out of the credit balance therein were accepted as genuine and the cash withdrawn was sufficient to cover high denomination notes held by the assessee and hence as per law the assessee was not required to prove source of receipt of such high denomination currency notes which were legal tender at the relevant time.

4. That, the Ld. revenue authorities further erred in assuming the deposit of SBN of Rs. 1000/- each aggregating to Rs.94,50,000/- out of withdrawals of Rs. 1,02,75,000/- in denomination of 1000 and 500 legal currency notes as unexplained cash credit u/s 68 of the Act in spite of the fact that it is not mandatory that the same denomination currency notes which were withdrawn from the bank should be deposited whether it is during pre-demonetization period or post-demonetization period and hence the allegation that the same denomination currency notes were not deposited was totally illogical, baseless and unsustainable in law.

5. That, on the facts and in the circumstances the ld. revenue authorities solely on suspicion, surmise and conjecture have taken an adverse inference against the assessee in having deposited its undisclosed income in SBN during the demonetization period and

added a sum of Rs.94,50,000/- u/s 68 of the Act when the conditions precedent to invoke the said section were not satisfied in this.

6. That, as the order of Ld. C.I.T.(A), NFAC on the above issues suffers from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.

7. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/ or rescind any or all of the above grounds.”

3. Brief facts of the case as culled out from the records are that the assessee is a limited company engaged in the business of trading/investment in shares and securities. E-return of income for AY 2017-18 filed on 12.12.2017 declaring NIL income. Case selected for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. During the course of assessment proceedings, ld. Assessing Officer (in short ld. “AO”) noticed that the assessee operated three bank accounts for its business. A sum of Rs. 94,50,000/- was deposited on 16.11.2016 in the account held in Union Bank of India. The assessee was asked to explain the said cash deposit which was made post-demonetization date i.e. 08.11.2016. In reply, the assessee stated that the cash of Rs. 1,02,75,000/- was withdrawn from Tamilnad Mercantile Bank during the pre-demonetization period and the same explains the cash deposit in Union Bank of India. Ld. AO firstly doubted why the assessee kept huge amount of cash withdrawn unused as it had no relation with the business activity of the assessee. Though the assessee stated before ld. AO that the cash withdrawal made during July, 2016 to October, 2016 (pre-monetization) was for making investment in unquoted shares and giving advance for purchase of properties but due to declaration of demonetization

scheme on 08.11.2016 the assessee had no option except to deposit the same in the bank.

4. Ld. AO further enquired into the transaction and got the information of the denomination of the currency received by the assessee on withdrawal from Tamilnad Mercantile Bank and matched with the cash currency deposited in the Union Bank of India and came to a conclusion that the assessee had at least 1878 nos. of 500 old currency notes in hand as 01.11.2016 and the same did not match with the currency notes deposited on 16.11.2016 which are of 1000 old currency notes. Though the assessee submitted the cash book and all necessary details but the same could not satisfy the ld. AO and he proceeded to make the addition u/s 68 of the Act for unexplained cash credit at Rs. 94,50,000/- and assessed the income at Rs. 94,50,000/-.

5. Aggrieved, the assessee preferred appeal before the ld. CIT(A) but failed to succeed as ld. CIT(A) confirmed the view taken by the ld. AO observing as follows:

“3.1 Ground Nos 1& 2:-Through these grounds of appeal, the appellant has challenged the addition made by the AO amounting to Rs: 94,50,000/- on account of unexplained cash credit u/s 68 of the Act. During the year under Consideration the appellant has made the cash deposit of Rs: 94,50,000/- in the Bank Account. During the course of assessment proceedings, the appellant stated that the cash deposited has been withdrawn from the bank earlier. The appellant was having 1878 number of Rs: 500 old currency notes, but the appellant on 16.11.2016 deposited the Rs: 1000 old currency notes. Therefore, the claim of the appellant that the deposited notes were same which were withdrawn earlier is not acceptable. From the above, it is clear that the appellant has not kept the money withdrawn during pre-demonetization period idle but used it for some other purpose. The appellant during the course of assessment proceedings

as well as appellate proceedings has not filed the cash book. The appellant during the course of assessment proceedings could not able to produce the sales bill in support of generation of the cash. The appellant during the course of assessment proceedings, failed to produce the sales bill. During the course of appellate proceedings, the appellant failed to produce the cash book.

3.1.1 Section 68 provides that any cash credit found in the books relating to which appellant offers no explanation about the nature and source thereof or such explanation is unsatisfactory, such credits could be charged to tax as income of the appellant. The principle embodied in section 68 is only a statutory recognition of what was always understood to be the law based upon the rule that burden of proof is on the taxpayer to prove the genuineness of borrowings or other credits in his books, since the relevant facts are exclusively within his knowledge.

The expression “nature and source” has to be understood together as a requirement of identification of the source and the nature of the source, so that the genuineness or otherwise could be inferred.

3.1.2. It is settled law that while considering the question whether the alleged loan taken by the appellant was a genuine transaction, the initial onus is always upon the appellant and if no explanation is given or the explanation given by the appellant is not satisfactory, the Assessing Officer can disbelieve the alleged source of cash. But the law is equally settled that if the initial burden is discharged by the appellant by producing sufficient materials in support of the loan transaction, the onus shifts upon the Assessing Officer and after verification, he can call for further explanation from the appellant and in the process, the onus may again shift from the Assessing Officer. Therefore, the appellant failed to discharge the burden of proof by not establishing the generation of cash. Therefore, the addition made by the AO on this ground amounting to Rs.94,50,000/-Confirmed. The appeal on this ground is Dismissed.”

6. Aggrieved the assessee is now in appeal before this Tribunal. Ld. Counsel for the assessee referring to the written submissions running into 12 pages, stated that the assessee has successfully shown the proof of the source of cash deposits in bank during demonetization period which is evidently the cash withdrawals

made by the assessee from its own bank account during the pre-demonetization. The said fact is not even disputed by ld. AO. All cash withdrawals and cash deposit and duly entered in the audited accounts of the assessee. The additions made by ld. AO are clearly based on surmises and conjectures and there is no reference to any documentary evidences in the assessment order to remotely suggest that cash deposits were unexplained or ingenuine. It was also stated that enquiries conducted by the ld. AO with the banks and the replies filed by the bank in response to the notice issued u/s 133(6) of the Act were not shared with the assessee during the course of assessment and this act of ld. AO in not allowing an opportunity to the assessee to examine the material gathered by the ld. AO in the course of his enquiry during assessment is not as per law. Reliance was place on the decision of Hon'ble Supreme Court in the case of *Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata-II* reported in [2015] 281 CTR 241 (SC).

7. Per contra ld. D/R vehemently argued supporting the orders of both the lower authorities.

8. We have heard rival contentions and perused the records placed before us. Though the assessee has raised five grounds of appeal on merit, but, they all relate to the addition made u/s 68 of the Act at Rs. 94,50,000/- made by the ld. AO alleged unexplained cash deposit in the bank account during post-demonetization period and the same is confirmed by the ld. CIT(A).

8.1. We note that the cash sum of Rs. 94,50,000/- was deposited in the bank account held with Union Bank of India, account no.

495601010033544 on 16.11.2016. This date of deposit falls in post-demonetization period. On 08.11.2016 demonetization scheme was announced scrapping of currencies in the Rs. 1,000/- & Rs. 500/- notes. Since such large cash deposit was made in post-demonetization period, it was under examination by the income tax Department. The assessee's case was selected for scrutiny and the source of alleged cash deposit on 16.11.2016 was asked to the assessee.

8.2. We, further, find that the assessee is a limited company and has regularly maintained books of account including the cash and all relevant details. It also holds account with two other banks. During the pre-demonetization period the assessee had withdrawn cash sum of Rs. 1,02,75,000/- from Tamilnad Mercantile Bank, Account No. 083150050801693. As claimed by the assessee, this cash was withdrawn on various dates during July, 2016 and October, 2016 for making investment in unquoted shares and also for giving advance or purchase immovable properties. So far as this fact of withdrawing of cash is concerned the same has not been disputed by the Revenue authorities at any stage. The assessee's claim is very simple that the source of cash deposit of Rs. 94,50,000/- is the cash withdrawn of Rs. 1,02,75,000/- on various dates during the year itself which were before the announcement of demonetization scheme on 08.11.2016.

8.3. The first observation of the Revenue authorities that why the assessee kept the funds idle with it for few months seems to have no merit in our view as it is the prerogative of the assessee company to utilize its funds in the way it finds prudent to be done

so in the interest of running a business. We do not find anything unusual of the assessee keeping the cash in hand idle with it which was withdrawn from the bank and shown in the cash book.

8.4. The second interesting observation by the ld. AO is that the denomination of currency withdrawn from Tamilnad Mercantile Bank do not tally with the denomination of the currency deposited in Union Bank of India. Though this allegation of the ld. AO made on the basis of information received by the ld. AO from bank u/s 133(6) of the Act was not provided to the assessee, thereby, denying the principles of interest of justice in not providing the assessee an opportunity to cross examine the information gathered by the ld. AO in the bank of the assessee and this action of the ld. AO in itself holds the assessment proceedings bad in law, in view of the ratio laid down by the Hon'ble Apex Court in the case of *Andaman Timber Industries (supra)*.

8.5. Even otherwise the ld. AO should have appreciated that the currency in whatever form was in Indian Rupee and the same was withdrawn from bank, duly disclosed in the audited books of account, regularly shown in the cash balance carried forward and the assessee had sufficient cash in hand as on the date of announcement of demonetization scheme on 08.11.2016 and, in our considered view there remains no doubt about the genuineness of the transaction of cash deposit of Rs. 94,50,000/- in the bank account on 16.11.2016.

8.6. The assessee has successfully shown the source of the same and thus, no addition is called for u/s 68 of the Act for the cash

deposit. We, therefore, reverse the finding of the ld. CIT(A) and delete the addition of Rs. 94,50,000/- and allow ground nos. 1 to 5 raised by the assessee.

9. Ground nos. 6 & 7 are general in nature which need no adjudication.

10. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 22nd June, 2022.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 22.06.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. M/s. Coastal Fertilisers Ltd., 33/1, Marshall House, Room No. 303, N.S. Road, BBD Bagh, Kolkata-700 001.***
- 2. ITO, Ward-15(1), Kolkata.***
- 3. CIT(A)- National Faceless Appeal Centre (NFAC), Delhi.***
- 4. CIT-***
- 5. CIT(DR), Kolkata Benches, Kolkata.***

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata