

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B’BENCH: BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.1086/Bang/2022
AssessmentYear: 2017-18

Yagnavalkya Souhardha Credit Co. Ltd. No.28, 3 rd Main Road Chamarajapet Bangalore 560 018 PAN NO :AAAJY0024E	Vs.	ITO Ward-5(2)(4) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Dinesh Kumar, A.R.
Respondent by	:	Shri Gudimella V.P. Pavan Kumar, D.R.

Date of Hearing	:	02.01.2023
Date of Pronouncement	:	06.01.2023

O R D E R

PERBEENA PILLAI, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order of CIT(A), NFAC, Delhi dated 21.11.2022 for the AY 2017-18. The grounds of appeal raised by the assessee are reproduced as under:

“Treatment of Deposit of cash to the bank during the period of demonetization as unexplained income u/s 68 is bad in law need to be quashed.”

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2.1 The assessee is a cooperative credit society engaged in providing credit facilities to its members, filed its return of income for the assessment year under consideration on 20/09/2016 declaring Nil income after claiming Chapter VIA deduction u/s 80P of the Act of Rs. 41,71,787/-. It was noticed that the assessee has been collecting membership fees accepting deposits and providing credit facilities to the members.

2.2 The Ld.AO noted that the assessee had deposited Specified Bank Notes [SBN's] received from its members during the period of demonetization into its bank account no.220 amounting to Rs.38,82,000/- and in bank account no.20589 amounting to Rs.54,58,000/- with Shri.M.Vishvesvaraya Co-operative Bank Ltd, Shankarmutt Road Bangalore. In course of the assessment proceedings, the assessee explained that its members had deposited the SBN's with the assessee and in turn, the assessee had deposited the said SBN's in the Bank.

2.3. The Ld.AO after considering the submissions made the said addition of Rs.93,40,500/- u/s 68 rws 115BBE of the Act on the ground that the assessee ought not to have accepted SBN's, which are banned and cannot be considered as legal tenders.

Aggrieved, the assessee challenged the assessment order before the CIT, who confirmed the order of the Ld.AO.

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Aggrieved by the order of the CIT(A), the assessee is before us.

3. The only Ground raised by the assessee is in respect of the addition made u/s. 68 r.w.s. 115BBE in respect of the money deposited into assessee's bank during demonetisation period. The Ld.AR submitted that it accommodated its members by extending its services by accepting the money deposited by them. It is the submission of the assessee that no benefit has accrued to assessee from the deposit of demonetised currency notes and that assessee has merely acted as an intermediary in utilising old currency which ceased to be accepted as a legal tender. The Ld.AR submitted that during the demonetisation period, assessee deposited cash that were received from its members that are verifiable.

3.1. The Ld.AR submitted that authorities below have not verified the genuineness and has rejected the claim of the assessee by considering the said deposits to be unexplained cash credit. He thus submitted that the issue may be remanded for due consideration based on the evidences filed by assessee.

3.2. On the contrary, the Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

4. We have carefully considered the rival contention and perused the orders of the lower authorities.

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4.1. Admittedly the assessee has deposited cash during the post-demonetization between 09/11/2016 and 30/12/2016. Therefore Ld.AO made addition of said amount as income of the assessee u/s. 68 of the income tax act, on the ground that the assessee ought not to have accepted SBN's which were no longer a legal tender. At the outset, we are of the view that the cash book and the confirmations filed by the assessee should have been verified.

4.2. We have carefully gone through the various standard operating procedures laid down by the central board of direct taxes issued from time to time in case of operation clean. The 1st of such instruction was issued on 21/02/2017 by instruction number 03/2017. The 2nd instruction was issued on 03/03/2017 instruction number 4/2017. The 3rd instruction was in the form of a circular dated 15/11/2017 in F.No. 225/363/2017-ITA.II and the last one dated 09/08/2019 in F.no.225/145/2019-ITA.II. These instructions gives a hint regarding what kind of investigation, enquiry, evidences that the assessing officer is required to take into consideration for the purpose of assessing such cases.

4.3. In one of such instructions dated 09/08/2019 speaks about the comparative analysis of cash deposits, cash sales, month wise cash sales and cash deposits. It also provides that whether in such cases the books of

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accounts have been rejected or not where substantial evidences of wide variation be found between these statistical analyses. Therefore, it is very important to note that whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money.

4.4 The instruction dated 21/02/2017 that the assessing officer basic relevant information *e.g.* monthly sales summary, relevant stock register entries and bank statement to identify cases with preliminary suspicion of back dating of cash and is or fictitious sales. The instruction is also suggested some indicators for suspicion of back dating of cash else or fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year. It also suggests that, abnormal jump in percentage of cash trails to on identifiable persons as compared to earlier histories will also give some indication for suspicion. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases is also some indication for suspicion of fictitious sales. Transfer of deposit of cash to another account or entity, which is not in line with the earlier history. Therefore, it is important to examine whether the case of the assessee falls into any of the above parameters are not.

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4.5 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions. We are aware of the fact that not every deposit during the demonetisation period would fall under category of unaccounted cash. However the burden is on the assessee to establish the genuineness of the deposit in order to fall outside the scope of unaccounted cash.

4.6. The Ld.AO shall verify all the details / evidences filed by the assessee based on the above direction and to consider the claim in accordance with law.

Needless to say that proper opportunity of being heard must be granted to the assessee. The assessee may be granted physical hearing in order to justify its claim.

Accordingly the grounds raised by the assessee stands allowed for statistical purposes.

In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 6th January, 2023

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd-
(Beena Pillai)
Judicial Member

Bangalore,
Dated 6th Jan, 2023
VG/SPS

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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.**