

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1063/Chny/2022**
निर्धारण वर्ष / Assessment Year: 2017-18

Devampalayam PACCS,
5/18, Karuvaloor Road,
Sarkarsamakulam Post,
Coimbatore South,
Coimbatore – 641 107.

[PAN: AAAAD-8153-E]

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

Income Tax Officer,
v. Non-Corporate Ward-3(2)
Race Course Road,
Coimbatore – 641 018.

(प्रत्यर्थी/Respondent)

: Shri. M. Karunanatham, Advocate
: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 20.02.2023
घोषणा की तारीख/Date of Pronouncement : 24.02.2023

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi, dated 21.10.2022 and pertains to assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

"We would like dispute the following points in the order passed by the CIT (Appeals).

4.3

The AO Submitted the claim of cash deposits of Rs. 55,68,994 by members, are not genuine.

We would like to bring to your notice that we have submitted records such as the Daybook, Pay-in-slip, and KYC of all members who made cash deposits. Under Section 2858A of the income tax act 1961 the obligation to furnish a statement of the financial transaction complied by us. This shows our Genuinity.

4.3.1 and 4.3.2

The AO has observed that we are not authorized to collect the SBNs from 09-11-2016.

On this point, we agree, and submit that we collected the deposits on 08-11-2016 which is before the SBNs became invalid.

4,5,4.6 and 5

The AO has submitted that the recorded statement in the affidavit of all depositors whose details were submitted by the society, were either signed or not aware of the content of the affidavit by signed.

It can be observed that all members appeared before the inquiry officer of the Income Tax department, clearly stated that they made the cash deposits in Society on 08-11-2016. The Members either said they did not sign the affidavit or don't remember signing it.

We submitted the pay-in slip with the member's signature and their Pan card for signature verification.

Even though the affidavits are not admitted, the sworn statement of depositors before the income tax department enquiry officer states the same as in the affidavit. So, it is very clear the cash deposit was made by the member only.

5.2 *The AO has in his observation accused us of manipulating the manual maintenance of records to our benefit.*

We would like to submit that we had submitted all records such as cash book, pay-in-slip, pass book to the Income tax department which clearly shows our genuinity, and the accusation is baseless.

Based on the above grounds we request you to set aside the order of GI! (Appeals) for the addition of income of Rs. 55,26,606/-, Since we have complied as per section 285BA of the income tax act and given all details of the depositors, action should be taken on depositors only not on us."

3. The brief facts of the case are that, M/s. Devampalayam Primary Agricultural Co-operative Credit Society is a society registered under Tamilnadu Co-operative Societies Registration Act and engaged in the business of providing credit facilities to its members and running public distribution shops. The appellant did not file its return of income for the assessment year 2017-18. As per information available with the Assessing Officer, it was noticed that a sum of Rs. 61,46,000/-, cash deposits was made during the demonetization period from 08.11.2016 to 30.12.2016 in the SB accounts of Society maintained with Coimbatore District Central Co-operative Bank Ltd. It was further noted that, during the demonetization period huge amount of credit (cash as well as credit through other banking mode) in their bank account maintained with District Central Co-operative Bank and relevant details of deposits made with bank are given in

para 5 of assessment order. The assessee was called upon to explain the credits in the bank account, for which the assessee neither filed any details nor explained source. Therefore, the AO treated total deposits found in the bank account maintained with Coimbatore District Central Co-operative Bank Ltd as unexplained money u/s. 69A of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

4. The assessee carried the matter in appeal before the CIT(A) and argued that the assessee has filed evidences in the form of financial accounts and also affidavits from the alleged depositors to explain cash deposits made during the demonetization period. The evidences filed by the assessee have been remanded to the AO for his verification and comments. The AO, vide his remand report dated 23.05.2022, observed that out of cash deposits of Rs. 58,36,000/- of specified bank notes during the demonetization period, the assessee could not explain source for deposits amounting to Rs. 55,26,606/-. The Id. CIT(A), on the basis of evidences filed by the assessee and remand report of the AO, opined that the assessee had recorded unaccounted cash in the names of various persons who had no source of income, and thus

rejected arguments of the assessee and sustained additions made by the AO towards cash deposits during the demonetization period amounting to Rs. 55,26,606/-. The relevant findings of the Id. CIT(A) are as under:

"5.2 *The appellant society has utilized its manual maintenance of books to its advantage to record such huge cash as received in the demonetized currency in the books just prior to the announcement of demonetization on the night of 8th November 2016. The unaccounted cash in the demonetized notes has been recorded in the names of the above the depositors who had no source of such huge cash. It is also noticed that some of the accounts are opened on 08.11.2016 and immediately huge cash was been shown to have been deposited. Similarly in the accounts opened prior, there were hardly any transactions recorded earlier and for the first time on the eve of demonetization, huge cash was deposited which was otherwise claimed to be in their possession for years together. It is also notice that the depositors had accounts in other banks including Public Sector Banks which were authorized to receive the de-notified currencies, but preferred to open new accounts in this Society and deposit such huge monies in de-notified currencies which is highly dubious. Further it is seen that the appellant never received such huge cash on any single day in any of the previous years and later years. It was noted that the whole cash deposited on this day was even more than the whole cash deposits in a year. The appellant backdated its entries in the accounts a day prior to the demonetization as it is not an authorized agency to receive de-notified currency. These are nothing but the moneys belonging to the Society which are not accounted for and therefore the action of the AO to bring them to tax is upheld.*

5.3 All the grounds relating to the appeal pertain to the claims of the appellant have been addressed by accepting the profits reflected in the accounts submitted to the Cooperative Audit Department. All the credit entries except for the demonetized notes for the reasons mentioned above have been considered and the additions made on this account have been deleted. In result, the addition of Rs. 55,26,606/- pertaining to cash deposited in the demonetized notes is sustained after accounting for the opening cash balance as on 08.11.2016 of Rs 3,08,394/-."

5. The Id. Counsel for the assessee, submitted that the Id. CIT(A) erred in sustaining additions made towards cash deposits made during demonetization period to Coimbatore District Central Co-operative Bank Ltd, without appreciating fact that the assessee had explained source for cash deposits out of huge deposits received from various account holders. The Id. Counsel for the assessee, further submitted that various account holders have deposited specified bank notes with the assessee and the assessee has in turn deposited said cash into District Central Co-operative Bank. The assessee had explained source for cash deposits and also filed necessary affidavits from various deposit holders. The AO, disregarded affidavits filed by the assessee and has treated cash deposits

with District Central Co-operative Society as unexplained money of the assessee.

6. The Id. DR, on the other hand supporting the order of the Ld. CIT(A) submitted that, the assessee could not explain source for cash deposits during the demonetization period. The assessee was not maintaining regular books of accounts and also not filed return of income. When the AO called upon the assessee to explain source for cash deposits, the assessee claims to have received cash deposits from various account holders on 08.11.2016. From the details filed by the assessee, the AO noticed that account holders have opened accounts on 08.11.2016 and further, they do not have any proper source of income for cash deposits. Therefore, the AO has rightly treated cash deposits during demonetization period as unexplained money of the assessee.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee being a Co-operative Society is engaged in the business of providing credit facility to its members and in this process the assessee is operating savings and current

account of its members. During the course of demonetization, the assessee has made cash deposits of Rs. 58,36,000/- in specified bank notes to savings bank account maintained with Coimbatore District Central Co-operative Bank Ltd. The assessee explained before the AO that, source for cash deposits is out of cash deposits received from various account holders, and to support this, the assessee has filed account copies of certain deposit holders along with their affidavits. The AO, disregarded affidavits filed by the assessee only on the ground that deposit holders could not explain source for cash deposits. Therefore, he treated cash deposits made during demonetization period as unexplained money of the assessee.

8. Having heard both the sides and considered relevant materials on record, we find that the AO has assessed total cash deposits during the demonetization period with District Central Cooperative Bank as unexplained money of the assessee. We have gone through reasons given by the AO, in light of various arguments made by the Id. Counsel for the assessee and we do not find any substance in reasons given by the AO to treat cash deposits as unexplained money of the

assessee for simple reason that the assessee being a Co-operative Society has received cash deposits from various account holders in specified bank notes on 08.11.2016 to 10.11.2016. The assessee has deposited very same cash in specified bank notes to District Central Co-operative Bank during demonetization period. In our considered view, when the assessee has explained source for cash deposits and said cash deposits is out of cash deposits received from its members through savings bank /current bank, which is supported by necessary affidavits, then it is for the AO to examine the claim of the assessee keeping in mind the nature of business of the assessee. But, in the present case, the AO without carrying out any verification, simply disregarded all affidavits filed by the assessee and made additions u/s. 69A of the Act, by stating that the depositors could not explain source for cash deposits made during demonetization period with assessee society. In our view, the AO is completely failed in his duty to understand the issue, because the assessee need not to prove source for cash deposits of his account holders, but what the assessee needs to do is explain source for cash deposits made with District Central Co-operative Bank. In this case, the assessee has explained the source for cash deposits

with District Central Co-operative Bank with necessary evidences. If at all, the AO is not satisfied with explanation furnished by the account holders then, it is for the AO to treat said cash deposits in the account of various account holders as their unexplained money. However, said cash deposits cannot be treated as unexplained money of the assessee. Therefore, we are of the considered view that the AO and CIT(A) have completely erred in making additions towards cash deposits found during the demonetization period as unexplained money of the assessee, even though the assessee has explained source for cash deposits with necessary evidences. Thus, we set aside the order passed by the CIT(A) and remit the issue back to the file of the AO and direct the AO to re-examine the claim of the assessee in light of affidavits filed by various deposit holders to ascertain true nature of cash deposits found during the demonetization period. In case, the assessee is able to explain source for cash deposits with necessary evidences, then the AO is directed to delete additions made towards cash deposits as unexplained money of the assessee. We, further made it clear that in case the AO is having any doubt about the source for cash deposits of various deposit holders in the bank account maintained with assessee's

society, then the AO is free to look into the issue in the hands of various deposit holders in accordance with law.

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

Order pronounced in the court on 24th February, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/Judicial Member

Sd/-
(मंजुनाथ. जी)
(MANJUNATHA. G)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 24th February, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |