

आयकर अपीलिय 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.: **489/Chny/2022**
निर्धारण वर्ष / Assessment Year: 2017-18

M/s. Purani Hospital Supplies
Private Limited,
No. 117, Sengupta Street,
Ramnagar,
Coimbatore – 641 009.
[PAN: AADCP-0574-G]

v. The Deputy Commissioner of
Income Tax,
Corporate Circle -2,
Coimbatore.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri. R. Vijayaraghavan, Advocate
: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 19.05.2023

घोषणा की तारीख/Date of Pronouncement

: 31.05.2023

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 28.04.2022 and pertains to assessment year 2017-18.

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

"1. The order of the National Faceless Appeal Centre (NFAC) / Commissioner of Income tax (Appeals) /CIT(A) is contrary to law, facts and circumstances of the case.

2. The NFAC / CIT(A) erred in confirming the order of the Assessing Officer in adding a sum of Rs.1,82,57,000/- under Section 69 r.w.s Section 115BBE.

3 The NFAC / CIT(A) erred in ignoring the business model of the Appellant as well as explanation offered by the Appellant regarding cash deposits.

4 The NFAC / CIT(A) ought to have appreciated that the Appellant is engaged in supply of medicines in which, it is a normal trade practice but the clients to pay for the purchases in cash.

5 The Appellant had deposited the sale consideration realized in cash with the banks and hence no part of the same can be considered as unexplained income.

6 The NFAC / CIT(A) ought to have appreciated that the entire deposits and cash in the bank has been explained and correlated with individual transactions including the bills for sale and hence no part of the cash deposits represents any unaccounted entries in the books of account of the Appellant.

7 When the entire cash deposits have been accounted as sale realization, the department cannot consider part of it as unaccounted income merely because the sale consideration was realized in cash.

8 The NFAC/ CIT(A) ought to have appreciated that the quantum of deposits is in line with the sales. Sales is supported by VAT returns and the sale volume is also commensurate with Purchases. There are no extraordinary transactions which can lead to any suspicion of extra cash deposits.

9 In view of the submissions of the Appellant supported and substantiated by documents there is no question of any amount being considered u/s.69 and provisions of Section 69 is not applicable to the cash deposits.

10 The NFAC/ CIT(A) ought to have appreciated that the Assessee having explained the source of the cash deposits on

the basis of entries in the books, the onus has shifted to the department to prove precisely that any part of the cash deposits has not been accounted and represented unexplained income.

11 The NFAC erred in not granting an opportunity for personal hearing even though the same was requested. Therefore the order is against all canons of natural justice and requires to be set aside and the Appellant given another opportunity to have a personal hearing.

12 Without prejudice to the above, if any part of the sale consideration is treated as unexplained income, correspondingly the income offered for tax in the return of income should be reduced by that extent.

13. The Appellant craves leave to adduce additional grounds at the time of hearing.”

3. The brief facts of the case are that, the appellant company is engaged in the business of distribution of pharmaceutical goods, surgical and diagnostics goods, filed its return of income for the assessment year 2017-18 on 31.08.2017, declaring total income of Rs. 5,71,25,541/- under normal provisions and book profit of Rs. 6,34,49,230/- under the provisions of section 115JB of the Income-tax Act, 1961 (herein after referred to as "the Act"). The case was selected for scrutiny to verify large value cash deposit during demonetization period and high value receipt of cash from third parties in response data and accordingly, notice u/s. 143(2) and 142(1) of the Act, was issued and called upon the

assessee to file necessary details including books of accounts to verify cash deposits during demonetization period. During the course of assessment proceedings, the AO noticed that the assessee has made huge deposits during demonetization period in specified bank notes as well as new currency notes amounting to Rs. 1,82,57,000/-. However, the closing cash balance available with the assessee as on 09.11.2016 is Rs. 20,000/- only. Although, the assessee claims to have received cash in specified bank notes from debtors and furnished the list of parties from whom the cash collection has been made, but as per the Gazette notification dated 09.11.2016, the assessee company was not permitted to accept specified bank notes and is not in exempt category to transact in the specified bank notes. Therefore, the Assessing Officer opined that the assessee could not justify availability of cash in hand to explain cash deposits to bank account during demonetization period in specified bank notes. Therefore, rejected arguments of the assessee and made additions towards total cash deposits in specified bank notes amounting to Rs. 1,82,37,000/- as unexplained investment u/s. 69 of the Act and levied tax u/s. 115BBE of the Act. The relevant findings of the AO are as under:

"7.7 To conclude, as the assessee company is not one of the entities authorized by the Central Government to accept SBNS during demonetization period in exchange for goods/services, and as the assessee has claimed that they have carried out valid sales during the demonetization period by duly paying VAT and by reporting such sales to the VAT authorities through statutory returns, such sales, by virtue of the provisions of Sec.4 of the Sale of Goods Act, 1930, pre suppose the receipt of price in legal tender, and accordingly any other claim to the contrary is not acceptable. Further, as the assessee has deposited the SBNS held by him in to his bank account, and since the Notification in S.O.No.3407(E) dt. 08-11-2016 issued by the Central Government has withdrawn the legal tender status of SBNS w.e.f 09-11- 2016 but permitted the deposit of such SBNS held by a person as on 08.11.2016 in to his bank account.

7.8 As per the discussions above the contract of sale if it involves receipt of SBNS as 'price', is ab-initio void as per the provisions of Sec.23 of the Contracts Act, 1872 and thus non-existent in the eyes of law. Hence, such SBNS cannot be treated as having arisen out of a contract for sale. Hence the sum of cash deposit to an amount of Rs.1,82,37,000/- (Rs.1,82,57,000-Rs.20,000/-) after 08.11.2016 during the period 09.11.2016 to 30.12.2016 is assessee's income which was unaccounted and not recorded in your books of accounts and deposited in the bank during the demonetization period. Hence the amount of cash deposits of Rs.1,82,37,000/- in the bank account from 09.12.2016 to 30.12.2016 is treated as unexplained Investment u/s 69 and u/s 115BBE of It Act 1961 added to the total income and taxed accordingly."

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id. CIT(A), the assessee has filed detailed written submission on the issue, along with analysis of cash sales/collection from debtors during the period of demonetization and compared with corresponding period of previous financial year and argued that, it has collected cash from debtors towards sales made in cash prior to demonetization period. Therefore, simply because the assessee has deposited cash to bank in specified notes after demonetized period, it cannot be held that the assessee has deposited unaccounted income to the bank account. The assessee has filed analysis on sale made during financial year 2015-16 and financial year 2016-17 along with bifurcation of cash sales to total sales, cash deposits to bank in earlier financial year and argued that if you see pattern, the cash sales and cash deposits to bank account in earlier financial year, when compared to the impugned assessment year, there is no substantial spike in cash deposit in demonetization period. Further, the assessee has declared sales made before demonetization period to GST authorities and paid necessary tax. The assessee had also filed party wise collection from debtors and furnished details in response sheet

immediately after demonetization period. The AO never disputed details filed by the assessee and also analysis of cash sales and cash deposits. However, made additions only for the reason that the assessee cannot accept specified bank notes after 09.11.2016, ignoring the fact that for the purpose of section 69 of the Act, what is required to be seen is source for deposit but not the legality or otherwise of restrictions imposed under other laws. If you go through the details filed by the assessee, it is abundantly clear that the assessee has explained source for cash deposit during demonetization period in specified notes and thus, the AO is erred in making additions towards cash deposits u/s. 69 of the Act.

5. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of relevant GOs issued by the Government of India and RBI to deal with specified bank notes on or after 08.11.2016, opined that although the assessee has filed necessary evidences to prove that it has collected cash from sundry debtors towards sales made before demonetization period, but as per notification of RBI and Government of India, the assessee is not an eligible assessee to collect or transact with specified bank notes on or after

08.11.2016. The Id. CIT(A), further observed that there is no dispute with regard to the fact that the assessee has filed details of sales prior to demonetization period and also list of parties from whom cash was collected after demonetization period. However, fact remains that when the legal tender of demonetized notes was declared as illegal, the assessee cannot accept those demonetized notes and deposit into bank account. Therefore, rejected arguments of the assessee and sustained additions made by the AO towards cash deposit during demonetization period u/s. 69 r.w.s. 115BBE of the Act. The relevant findings of the Id. CIT(A) are reproduced as under:

"5.1.4 It is also noted that besides the 2 notifications issued by GOI quoted by the Ld. AR VZ. gazette notification no S.O.3408(E) dated 8th November 2016 and S.O.3416(E) dated 9th November 2016, (and according to which the assessee company was not permitted to accept SBN and is not exempted category to trade in the SBN), there was another notification/ Extraordinary gazette issued by GOI Ministry of Law and Justice no. 2 of 2017 and known as THE SPECIFIED BANK NOTES (CESSATION OF LIABILITIES) ACT, 2017 was issued. As per para no. 4 of the same; only 2 following types of persons holding Specified Bank Notes on or before the 8.11.2016 were declared to be entitled to tender within the grace period with such declarations or statements, at such offices of the Reserve Bank or in such other manner as may be specified by it, namely: -

i. A citizen of India who makes a declaration that he was outside India between the 9th November, 2016 to 30th December, 2016, subject to such conditions as may be specified, by notification, by the Central Government; or

ii. Such class of persons and for such reasons as may be specified by notification, by the Central Government.

5.1.5 The Ld. A/R has, in these appeal proceedings more than once tried to take the plea that the appellant company did not deliberately violate the provisions of law banning SBN currency of Rs.500 and Rs.1,000, that the business of the appellant company was forced under dire necessity being in the business of supply of medicines and medical related products to patients, hospital and doctors to maintain the supply uninterrupted. It was further argued that the same cannot be treated on par with cash deposited without explanation to the satisfaction of the AO and therefore, the source of the cash deposit of Rs. 1,82,57,000 having been explained, the addition could not be made.

5.1.6 Though, the Ld. A/R of the appellant company could not produce any such notification either in the assessment proceedings or in these appeal proceedings to show that assessee of its business i.e., business of supply of medicines and medical related products to patients, hospital and doctors were entitled to accept SBN for a grace period but it is known that upto 11.11.2016 and even thereafter i.e., upto 31.12.2016 different classes of person like Govt. Hospitals, Petrol Pumps were allowed to receive SBN.

5.1.7 Therefore, during these appeal proceedings, in absence of any furnishing of such notification in support of the case of the appellant company, a letter dated 15.03.2022 was written by this office to RBI Branch, Nagpur and SBI local office to furnish such notification. Though, the local SBI Head Office has not been able to send/has not sent any reply so far; this office is in receipt of a letter F.No. Nag/dawal/kramank/S98/17.40.049/2022-23 dated 18.04.2022 sent by RBI, Nagpur Branch. Alongwith the said letter, a copy of Extraordinary Gazette of India dated 12.05.2017 issued by Ministry of Finance, New Delhi, Deptt. Of Economic Affairs in which notification No. G.S.R.460(E) of the same date i.e. 12.05.2017 was forwarded. However, this notification is of no use as it does not answer the query raised by this office letter dated 15.03.2022 in which it was clearly mentioned that in many cases of specified class of assessees/taxpayers like hospitals, petrol pumps, jewellers et al; there was some grace period/window of few days/ months

given by the RBI to make it possible/legal for those specified class of taxpayers to get SBN (Specified Banking Notes) deposited with them for the given window/grace period.

5.1.8 On the other hand, this notification is only talking about deposit of confiscated Specified Bank Notes where such SBNS were confiscated or seized by a Law Enforcement Agency. However, in between on 22.04.2022, it was found that pending these appeal proceedings; a one-page Written Submission dated 22.04.2022 was uploaded in which besides mentioning different submissions (4 in number) submitted by the appellant, from the beginning till the end, throughout these appeal proceedings; five such notifications were also uploaded. These notifications were chronologically dated 08.11.2016 [S.O. 3408 (E)], 09.11.2016 (S.O. 3416(E)) and amended only the earlier notification dated 08.11.2016; an PIB notification dated 11.11.2016; Notification dated 14.11.2016 (S.O, 3448 (E)) and lastly another PIB Notification dated 24.11.2016 by which it was declared that after mid night of 24.11.2016 there would be no over the counterexchange of old currency notes of Rs. 500 and Rs. 1000 denomination (the reason given was that over the counter exchange was showing a declining trend).

5.1.9 However, by the same PIB Notification dated 24.11.2016 it was also decided and conveyed that for a further period from the midnight of 24.11.2016 upto and inclusive of 15.12.2016 all the exemptions declared earlier would continue with some additions and modifications as detailed therein e.g. payment or fees in Central or State Government colleges; payment of current and arrear dues due to utilities to be limited to only water and electricity (continued to be available only for individuals and households); toll payment at toll plazas through old Rs. 500 notes; etc. However, this does not mention any payment to hospitals as is the case of the appellant company.

5.1.10 Such mention was found only in notification dated 08.11.2016 and 09.11.2016 (which was only an amendment of the earlier notification dated 08.11.2016). It is interesting to note that in the 1st Notification the eligible assessee/taxpayers who were allowed window/grace period (to receive payments in SBNS) were also including government hospital to whom payments for medical treatment were being made and pharmacies in government hospitals for

buying medicines (that too with doctor's prescription). Further, in 2nd notification dated 09.11.2016 again the allowance was extended only to payments in all pharmacies on prescription of doctor and proof of identity. Thus, it is categorically clear that appellant company like private hospitals were not allowed to have window/grace period to receive payments in SBNs.

5.1.11 In the light of such facts, I am afraid; there is no such occasion to give any relief to the appellant company and the action of Ld. AO, in making the impugned addition of Rs. 1,82,57,000 u/s 69 r.w.s. 115BBE of the Act, is confirmed and the appellant company fails to get any relief on this account as it is not entitled for the same. The amount of addition is confirmed and, therefore, Ground no. 1 to 4 are dismissed."

6. The Id. Counsel for the assessee, submitted that the Id. CIT(A) is erred in confirming additions made by the Assessing Officer towards cash deposits u/s. 69 r.w.s. 115BBE of the Act, ignoring the business model of the appellant as well as explanation offered by the appellant regarding cash deposits. The Ld. Counsel for the assessee, submitted that the assessee is engaged in supply of medicines, in which it is a normal trade practice that the clients to pay for the purchases in cash. The appellant had deposited the sale consideration realized in cash with the banks and hence it cannot be considered as unexplained income. The assessee had also explained and correlated with individual transactions including the bills for sale and collection from debtors. The assessee had also filed

necessary details including comparative sales / cash collections and cash deposits during financial year 2015-16 & 2016-17. The Assessing Officer never identified major deviations in cash collections during demonetization period when compared to earlier financial year. But, made additions only for the reason that the assessee is not eligible to accept specified bank notes after 09th November, 2016, ignoring fact that the specified bank notes (cessation of liability) Act, 2017, permits the person to hold, transfer or receive specified bank notes up to appointed date and section 2(a) defines appointed date as 31st December, 2016. The Id. Counsel submitted that the assessee has accounted sales made in cash before demonetization period and paid relevant taxes. However, the Assessing Officer made towards cash collection from very same sales after demonetization period which amounts to double taxation which is not permissible. He further referring to provisions of section 69 of the Act, submitted that in order to bring any income within the ambit of provisions of section 69 of the Act, what is to be seen is the assessee made investment and such investment is not explained with known source of income to the satisfaction of the Assessing Officer. In this case, the assessee has explained source of cash deposits during

demonetization period and thus, the same cannot be treated as unexplained investment u/s. 69 of the Act. In this regard, he relied upon the following judicial precedents:

- 1. order of Bangalore Tribunal in the case of Sasanur Hospital vs PCIT – ITA No. 415/Bang/2022 – Asst year 2017-18 dated 27.09.2022*
- 2. Order of Mumbai Tribunal in the case of Jet Freight Logistics Limited vs CIT – ITA No 683/Mum/2022 – Asst year 2017-18 dated 23.09.2022*
- 3. Order of Visakhapatnam bench in the case of ACIT vs Hirapanna Jewellers – ITA No 253/Viz/2020 etc dated 12.05.2021*
- 4. CBDT Circular No. F No. 225/145/2019 – ITA-II dated 09.08.2019*
- 5. Order of Chennai Tribunal in Uma Maheswari vs ITO – ITA No. 527/Chny/2022 dated 14.10.2022*

7. The Ld. Senior DR, Shri D. Hema Bhupal, JCIT, supporting the order of the CIT(A) submitted that the assessee could not explain as to how it can accept specified bank notes after 09th November, 2016 with reference to government notification for withdrawal of bank notes issued by Government of India and RBI. Further, the notification issued by the RBI and Government of India, specifically allowed certain categories to accept specified bank notes up to 31st December, 2016. The assessee does not come under any of the categories permitted by the Government to accept

specified bank notes. Therefore, from the above, it is very clear that the assessee could not explain source for cash deposit made during demonetization period and thus, the Assessing Officer and CIT(A) has rightly made additions and their orders should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts borne out from records indicates that the assessee is in the business of distribution of pharmaceutical goods, surgical and diagnostics goods, which is considered to be essential goods. The assessee has deposited a sum of Rs. 1,82,37,000/- during demonetization period in specified bank notes to various bank accounts. The assessee claims that source for cash deposit is out of realization of cash sales made before demonetization period. The assessee has filed necessary details including copies of sales bills made in cash before demonetization period and also list of parties from whom cash collected after demonetization period and deposited into bank account. The assessee had also filed necessary details of information furnished to department immediately after demonetization period towards cash

collected from third party in response data. The Assessing Officer is not disputing all these claims of the assessee including evidence filed in support of justification for source for cash deposit. But, the Assessing Officer has made additions towards cash deposit in specified bank notes after demonetization period only for the reason that the assessee is not eligible to transact or receive any specified bank notes after demonetization as per notification/GO issued by RBI and Government of India. The Assessing Officer, had discussed the issue with reference to GO issued by RBI and Government of India and concluded that since the assessee has accepted demonetized currency in violation of circular/notification issued by the Government of India, the source explained by the assessee cannot be accepted. In other words, the Assessing Officer never disputed fact that the assessee has made sales in cash before demonetization period and also realized cash from debtors against cash sales made before demonetization period. Therefore, to decide the issue whether the assessee can accept specified bank notes even after it was banned for legal tender after 09th November, 2016 and further, the same can be added u/s. 69 of the Act as unexplained investment and also can be taxed u/s. 115BBE of the Act, it is necessary to

examine the case in light of business model of the assessee, and evidence filed during the course of assessment proceedings.

9. The provisions of section 69 of the Act, deals with unexplained investment, where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of accounts, if any, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by the assessee is not in the opinion of the Assessing Officer, satisfactory, then the value of the investments may be deemed to be the income of the assessee of such financial year. In order to invoke provisions of section 69 of the Act, two conditions must be satisfied. First and foremost condition is there should be an investment and second condition is the assessee could not explain source for said investment. In this case, if you go through evidence filed by the assessee including comparative details of amount collected out of sales for financial year 2015-16 & 2016-17 and details of cash deposit into bank for above financial years, we find that there is no abnormal deviations from its normal course of business.

Further, on verification of analysis of cash sales and cash deposits to bank account there is no deviation of cash sales and cash deposits when compared to earlier financial year and demonetization period. Further, the assessee is dealing in essential commodities like medicines, surgical and diagnostics equipment through medical shops, hospital, doctors etc. The agents of the assessee come and collect cash from parties and directly deposit to bank account of the assessee. It is also not in dispute, in this line of business the majority of sales is in cash, because doctors, hospitals and medical shops mainly deals with cash. Therefore, from the business model of the assessee and trade practice there is no doubt of what so ever with regard to the explanation offered by the assessee that it has collected cash from debtors towards sales made in cash before demonetization period. Further, the appellant has also regularly availing GST/VAT returns and there is also being no change or deviation in the VAT returns field for the earlier months i.e., before the announcement of demonetization. The assessee had also declared sales made in cash in their books of accounts and filed necessary return of income and paid taxes on said income. The appellant has also made cash deposits regularly before and during that period including the

notes which are not banned and therefore, it is not a case of amount of deposit in specified bank notes has come out of undisclosed source or under any circumstances only to change the colour of the money. From the details filed by the assessee, it is evident that during the month of November and December, the assessee has made almost more than 5 crores cash deposit which includes various demonetized currency and regular notes. Further, the Assessing Officer has accepted fact that out of total cash deposits, only a sum of Rs. 1,82,37,000/- is in specified bank notes. From the above, it is very clear that there is no significant change in the pattern of cash sales, cash collection and cash deposit during demonetization period, when compared to earlier period in the same financial year and also during immediate preceding financial year. Therefore, we are of the considered view that the assessee has satisfactorily explained source for cash deposit made during demonetization period in specified bank notes and thus, the Assessing Officer is completely erred in making additions u/s. 69 of the Act.

10. Coming back to the observations of the Assessing Officer with regard to GO/notification issued by the RBI and

Government of India, to deal with specified bank notes. The Assessing Officer is mainly on the issue of notification issued by the RBI to deal with the specified bank notes and argued that the assessee is not one of the eligible person to accept or to deal with specified bank notes and thus, even if assessee furnish necessary evidence, the assessee cannot accept specified bank notes after demonetization and the explanation offered by the assessee cannot be accepted. No doubt specified bank notes of Rs. 500 & Rs. 1000 has been withdrawn from circulation from 09th November, 2016 onwards. The Government of India and RBI has issued various notifications and SOP to deal with specified bank notes. Further, the RBI allowed certain category of persons to accept and to deal with specified bank notes up to 31st December, 2016. Further, the specified bank notes (cessation of liability) Act, 2017, also stated that from the appointed date no person can receive or accept and transact specified bank notes, and appointed date has been stated as 31st December, 2016. Therefore, there is no clarity on how to deal with demonetized currency from the date of demonetization and up to 31st December, 2016. Therefore, under those circumstances, some persons continued to accept and transact the specified bank

notes and deposited into bank accounts. Therefore, merely for the reason that there is a violation of certain notifications/GO issued by the Government in transacting with specified bank notes, the genuine explanation offered by the assessee towards source for cash deposit cannot be rejected, unless the Assessing Officer makes out a case that the assessee has deposited unaccounted cash into bank account in specified bank notes.

11. We further, noted that the Central Board of Direct Taxes had issued a circular for the guidance of the Assessing Officer to verify cash deposits during demonetization period in various categories of explanation offered by the assessee and as per the circular of the CBDT, examination of business cases, very important points needs to be considered is analysis of bank accounts, analysis of cash receipts and analysis of stock registers. From the circular issued by the CBDT, it is very clear that, in a case where cash deposit found in business cases, the Assessing Officer needs to verify the explanation offered by the assessee with regard to realization of debtors where said debtors were outstanding in the previous year or credited during the year etc. Therefore, from the circular

issued by the CBDT, it is very clear that, while making additions towards cash deposits in demonetized currency, the Assessing Officer needs to analyze the business model of the assessee, its books of account and analysis of sales etc. In this case, if you go through analysis furnished by the assessee in respect of total sales, cash sales realisation from debtors and cash deposits during financial year 2015-16 & 2016-17, there is no significant change in cash deposits during demonetization period. Therefore, we are of the considered view that when there is no significant change in cash deposits during demonetization period, then merely for the reason that the assessee has accepted specified bank notes in violation of circulation/notification issued by Government of India and RBI, the source explained for cash deposits cannot be rejected. In our considered view, to bring any amount u/s. 69 of the Act, the nature and source of investment, needs to be examined. In case the assessee explains the nature and source of investment, then the question of making addition towards unexplained investment u/s. 69 of the Act does not arise. In this case, the source of deposits has not been disputed and has been created out of ordinary business sales which has been credited into books of accounts and profits has also been

duly included in the return of income filed in relevant assessment year. Therefore, we are of the considered view that, additions cannot be made u/s. 69 of the Act and taxed u/s. 115BBE of the Act towards cash deposits made to bank account.

12. At this stage, it is relevant to consider certain judicial precedents relied upon by the Id. Counsel for the assessee. The Ld. Counsel for the assessee relied upon the decision of Delhi High Court in the case of Agson Global Pvt Ltd vs ACIT [2022] 325 CTR 001. The Hon'ble Delhi High Court held that additions made on the sole ground of deviation in the ratio of cash sales and cash deposits during the demonetization period with that of earlier period, is improper and unlawful.

13. The assessee had also relied upon the decision of ITAT Indore Bench in the case of Dewas Soya Ltd, Ujjain vs ITO in ITA No. 336/Ind/2012, where it has been held as under:

The Hon'ble Indore ITAT Bench in the case of DEWAS SOYA LTD, UJJAIN vs. Income Tax (Appeal No. 336/Ind /2012 has held that," the claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price

ultimately credited to profit 8: loss account) and on the other hand amounts received from above parties has also been added u/s 68 of the Act. This view has been held by the Hon'ble Supreme Court in the case of CIT vs. Devi Prasad Vishwnath Prasad (1969) 72 ITR 194(SC) that "It is for the assessee to prove that even if the cash credit represents income, it is income from as source, which has already been taxed." The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again."

14. The Id. DR, has relied upon the decision of ITAT, Hyderabad Benches, in the case of Vaishnavi Bullion Pvt Ltd vs ACIT Taxsutra 914/ITAT/2022 (Hyd). We, find that in the said case, the Tribunal noted that CFSL report, books and statement are contrary to assessee's claim which are of post demonetization period. Under these facts, the Tribunal came to the conclusion that additions made towards cash deposits during demonetization period, assessee could not explain proper source. In this case, on perusal of details and records, we find that the assessee has filed all details to explain source for cash deposits and on the basis of details filed by the assessee, the Assessing Officer never disputed fact that source for cash deposit is not out of ordinary business receipts, which has been accounted in the books of accounts of the assessee and further, there is no deviation in cash deposits during

demonetization period when compared to earlier period in same financial year and in earlier financial year. Therefore, we reject the case laws relied upon by the Id. DR.

15. In this view of the matter and by considering facts and circumstances of this case, we are of the considered view that the Assessing Officer erred in making additions towards cash deposits during demonetization period u/s. 69 of the Act. The Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer. Thus, we set aside the order passed by the CIT(A) and direct the Assessing Officer to delete additions made towards cash deposits u/s. 69 r.w.s. 115BBE of the Act.

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

Order pronounced in the court on 31st May, 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: 31st May, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF