

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

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.329/Bang/2023
Assessment year : 2017-18

Merchants Credit Co-operative Society Ltd., Near Bus Stand, Hubli Road, KERUR – 587 206. Dist. Bagalkot. PAN : AAAAM 0702C	Vs.	The Income Tax Officer, Ward 1, Bagalkot.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ashok Mudnur, CA
Respondent by	:	Shri Mehere Yogesh Prabhakara Rao, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	10.08.2023
Date of Pronouncement	:	24.08.2023

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is against the DIN & Order No.ITBA/NFAC/S/250/2022-23/1051572681(1) dated 29.03.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC] for the Ay 2017-18 on the following grounds of appeal:-

- “1. The learned CIT(A) erred in confirming the order of the Assessing Officer which is opposed to law and facts of the case.
 2. The learned CIT(A) erred in confirming the order of Assessing Officer treating Rs 67,31,239/- cash received after demonetization as unexplained u/s 68 of the Income Tax Act 1961, even when cash receipts were explained and recorded in books of accounts. We draw support in the ITAT Cases decided
 - (i) Bhageeratha Pattina Sahahkara Sangh Niyamit Vs ITO ITA 646/Bang/2021 TS-5362 ITAT 2022 (Bang)
 - (ii) Prathamik Krushi Pattina Sahakari Sangh Niyamitha Vs ITO ITA 593/Bang/2021
 3. The learned CIT(A) erred in confirming Assessing Officer action of treating cash receipts u/s 68 of the Income Tax Act 1961 and charging it u/s 115BBE at 60 percent tax with 25 percent surcharge which was brought by amendment on 15/12/2016 (retrospective amendment-after commencement of assessment year 2017-18) which is bad in law.
 4. The appellants craves leave to add/alter any of the grounds of appeal on or before the date of final hearing.”
2. The brief facts are that the assessee is a cooperative society registered under the Karnataka State Co-op. Societies Act, 1959 and is engaged in the activity of accepting deposits, providing credit facilities, making investments and lending medium term agricultural related loans to its members. The assessee has made investments in fixed deposits etc. and derives interest income therefrom. There are also associate members in this society. The assessee filed return of income on 27.10.2017 declaring gross total income of Rs.62,44,052 and the same was claimed as deduction under Chapter VIA of the Act resulting in NIL total taxable income. The case was selected for scrutiny and statutory notices were issued to the assessee.

3. The main issue raised in this appeal is addition of cash deposits during the demonetisation period. During the course of assessment proceedings, the AO noticed that the assessee had deposited cash during the demonetisation period of Rs.68 lakhs from 9.11.2016 to 14.11.2016. The assessee had opening cash balance of Rs.78,761, resultantly there was a balance of Rs.67,31,239 actually being cash received from members and it was deposited into the bank. As per Central Govt. Notification No.2562 dated 08.11.2016, the assessee was not eligible for accepting cash in old currency (SBNs). Accordingly SBNs deposited by the assessee after 08.11.2016 becomes unexplained in the hands of the assessee as there was no value to the SBNs collected by the assessee. The assessee submitted the list of depositors, loanees with account Nos., specifying the SBNs and hence submitted it was not unexplained money. The AO noted that as per RBI letter dated 08.11.2016 & Govt. of India Gazette Notification dated 08.11.2016 the assessee was not designated/authorized by the RBI to collect such SBNs. Accordingly, the AO added it u/s. 68 and taxed it at special rate u/s. 115BBE of the Act.

4. On appeal, the CIT(Appeals) upheld the action of the AO. Aggrieved, the assessee is in appeal before the Tribunal.

5. The ld. AR submitted that during the demonetisation period, the assessee accepted cash deposits from its members for depositing in pigmy accounts, loan accounts, SBs A/c, and different accounts maintained with the assessee. The collection of money from the

members was in the ordinary course of business. The assessee did not get any financial benefit as alleged by the AO because the money was deposited in the members accounts only. After submitting the details of the members no further information was sought by the AO, accordingly, the assessee discharged the very purpose of section 68. Therefore section 68 will not apply in the hands of the assessee. He further submitted that RBI had issued a series of Circulars and when it came to the notice of the assessee in regard to Circular/Notification issued on 14.11.2016, the assessee did not accept any deposits in SBNs. He further submitted that on 14.11.2016 a Notification was issued that the DCC Banks were prevented from accepting money from the members and it was issued in the evening applicable from 15.11.2016. Thereafter, since 15.11.2016, the assessee has not accepted any money in SBNs. Therefore, the addition made by the AO u/s. 68 does not survive. In support of his arguments, he relied on the following judgments:-

- (i) Bhageeratha Pattina Sahakara Sangh Niyamit Vs ITO
ITA 646/Bang/2021 TS-5362 ITAT 2022 (Bang)
- (ii) Prathamik Krushi Pattina Sahakari Sangh Niyamitha Vs
ITO ITA 593/Bang/2021

6. The ld. DR strongly relied on the orders of lower authorities and strongly submitted that the assessee was not authorized to collect the SBNs in the demonetisation period. Therefore, both the authorities were justified in making addition and applying special rate of taxes. The CIT(Appeals) has dismissed the appeal of the assessee on the basis

of RBI Notification dated 08.11.2016 and also Govt. of India Gazette Notification dated 8.11.2016.

7. We have considered the rival submissions. The assessee is a credit co-operative society dealing with the members only. During the demonetisation period the members of the society have deposited cash in pygmie a/c, SB A/c, loan a/c. etc. The assessee has produced a list of depositors and the amount deposited by members with denominations of currency. The assessee has accepted the deposits from its members from 9.11.2016 to 14.11.2016. As per Gazette Notification of RBI & Govt. of India dated 08.11.2016, the assessee was not authorized to accept cash deposits in SBNs. The AO observed that the assessee was not authorized to receive or collect money in SBNs of Rs.1,000 and Rs.500 which were not in legal tender w.e.f. 09.11.2016 and such transactions on or after 09.11.2016 cannot be entered in cash book. The cash deposits made by the members of the society had no value as such. The Assessing Officer issued show-cause notice by observing that the impugned amount should be treated as income of the assessee u/s 69A of the Act., however the AO made addition u/s 68 of the I.T. Act. The assessee has satisfied the requirement of section 69A of the Act and the AO did not give further opportunity to the assessee for addition u/s 68 of the I. T. Act. During the assessment proceedings, assessee filed the details of list of depositors and loanees who made cash deposits. The AO accepted that it was money deposited by the members and noted that the assessee had brought the entries in its books of account, therefore section 68

will apply and accordingly treated it as income u/s. 68. There is no doubt that the assessee has satisfied the identity of the deposits, who are members of the society and genuineness of the transactions because the amounts have been deposited in the members accounts only. If the AO had any doubts that the assessee has not satisfied the ingredients of section 68, he could have asked further details from the assessee, but the AO has not done the same, which clearly shows that the assessee has discharged its duty to satisfy the requirement of section 68. We further note that the SBNs have been deposited in the members accounts, accordingly, the assessee did not get any extra benefit as observed by the AO in his order at para No. 06 which was treated as income us 69A of the Act. In view of this, the provisions of section 68 is not applicable in the present facts of the case and the AO without discussing in detail has made addition u/s. 68 which is not proper. Therefore the addition is deleted.

8. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 24th day of August, 2023.

Sd/-

Sd/-

(GEORGE GEORGE K.)
VICE PRESIDENT

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 24th August, 2023.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.