

आयकर अपीलीय अधिकरण, 'ए (एस एम सी)' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A (SMC)' BENCH, CHENNAI**

श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **252/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2017-18

M/s. J. Kalappa Naidu Sons,  
No. 19, Kalaskara Street, Arni  
T.V. Malai District - 632 301.

The Income tax Officer,  
v. Ward-2,  
Tiruvannamalai.

**[PAN: AACFJ-3611-J]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. Saroj Kumar Parida, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 31.07.2023

घोषणा की तारीख/Date of Pronouncement : 23.08.2023

**आदेश /ORDER**

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 24.01.2023 and pertains to assessment year 2017-18.

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

"1. The Order passed by the National Faceless Appeal Centre(NFAC) is contrary to law, facts and circumstances of the case.

2. The NFAC erred in confirming the addition of Rs.43,05,820/- made by AO in respect of SBN collected from debtors as unexplained income u/s.69A of the Act without appreciating the explanation offered by the Appellant in proper perspective.

2.1 The NFAC erred in summarily rejecting the submissions of the Appellant and holding that the unaccounted money in the form of SBN would have been deposited disguising as received from customers under the pretext of not being aware of guidelines.

2.2 The NFAC ought to have appreciated that the AO in para 4 of the order has observed that after verification of books of account including cash book, purchase bills, sales bills, VAT return, IT return and IDBI Bank statement the assessee has been regularly making cash deposits in the bank account and there is no abnormal increase in sales during demonetization period and the source of deposit is due to withdrawal and out of sales.

2.3 The NFAC ought to have appreciated that the provisions of section 69A of the Act are attracted only when the Appellant offers no explanation about the nature and source of acquisition of money and the explanation offered by him in the opinion of AO is not satisfactory.

2.4 The NFAC ought to have appreciated that in the present case the AO having accepted the genuineness of the transaction and the deposit of cash were out of sales and from withdrawals, therefore addition cannot be made u/s.69A of the Act merely because the deposits were made in SBN and not in new currency notes.

2.5 The NFAC ought to have appreciated that the Appellant is a distributor of cigarettes and the retailers were mainly petty shop owners from villages who used to regularly pay in cash.

2.6 The NFAC erred in not following the ratio laid down by the Hon'ble Chennai Tribunal in the case of Ganapathy Palaniyappan in ITA No.557 /CHNY /2022 dated 04.01.2023 and the order of the Hon'ble Tribunal in the case of ITO Vs Sri Tatiparti Satyanarayana ITA No.76/Viz/2021 dt 16.03.2022.

3. Appellant craves leave to raise additional grounds at the time of hearing."

3. The brief facts are that, the assessee is a wholesale distributor of ITC products, mainly cigarettes at Arni,

Thiruvannamalai District. The assessee has filed its return of income for the assessment year 2017-18 on 09.01.2018, admitting a total income of Rs. 5,80,500/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has made cash deposits of Rs. 1,38,30,000/- in specified bank notes during demonetization period, to its bank account maintained with IDBI Bank, Arni. The Assessing Officer, called upon the assessee to file necessary details including books of accounts, VAT returns etc., and verified with bank statement and found that source for cash deposits is out of sales during demonetization period and further, there is no abnormal increase in sales during demonetization period when compare to earlier financial years. The Assessing Officer, further noted that opening cash balance as on 08.11.2016 is Rs. 87,24,180/-. Therefore, taking into account the opening cash balance as per books of accounts, made additions to balance cash deposits of Rs. 43,05,820/- as unexplained money of the assessee u/s. 69A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), on the ground that the assessee should not have accepted demonetized currency from 08.11.2016 onwards, in view of notification issued by

Government of India and RBI. The assessee carried the matter in appeal before the first appellate authority and explained source for cash deposits. The Id. CIT(A), for the reasons stated in their appellate order dated 24.01.2023, rejected arguments of the assessee and sustained additions made by the Assessing Officer towards cash deposits u/s. 69A of the Act. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, Shri. Saroj Kumar Parida, Advocate, submitted that the Id. CIT(A) erred in sustaining additions made towards cash deposits u/s. 69A of the Act, without appreciating the explanation offered by the appellant. Since, the Ld. Counsel for the assessee submitted that the Assessing Officer never disputed fact that source for cash deposits is out of opening cash in hand and sales made during demonetization period, that too within one week from the date of demonetization. The assessee has explained reasons for accepting old currency notes from customers. When the Assessing Officer is not disputing source and further the assessee is explaining reasons for accepting old currency, the Assessing Officer should not have made addition u/s. 69A

of the Act. In this regard, he relied upon the decision of ITAT, Chennai Benches in the case of M/s. Purani Hospital Supplies Pvt Ltd vs DCIT in ITA No. 489/Chny/2022.

5. The Id. DR, Shri. D. Hema Bhupal, JCIT, supporting the order of the Id. CIT(A) and Assessing Officer submitted that, there is no dispute with regard to the analysis of sales and cash. But fact remains that, the assessee has accepted old currency after specified date, contrary to notification issued by Government of India and RBI. Therefore, the Assessing Officer has rightly treated cash deposits in excess of opening balance as unexplained money of the assessee and their order should be upheld. In this regard, he relied upon the decision of ITAT, Chennai Benches in the case of Vidhiyasekaran Pradeep Malliraj vs ITO in ITA No. 698/Chny/2022.

6. I have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts with regard to the impugned dispute are that, the assessee is in the business of wholesale distributor of ITC products. The assessee's business mainly covers rural places, where the assessee sells goods to petty shop owners

and collects sale proceeds in cash. The assessee claims to have deposited cash into bank account out of sale proceeds. The Assessing Officer, never disputed fact that the assessee has explained source for cash deposits with necessary evidence including sale bills etc. In fact, the Assessing Officer categorically observed that there is no adverse or abnormal increase in sales during demonetization period when compared to earlier period. The only reason given by the Assessing Officer to reject explanation offered by the assessee is notification issued by Government of India and RBI, not to deal with specified bank notes during demonetization period.

7. I have given thoughtful consideration to the reasons given by the Assessing Officer to make additions towards cash deposits u/s. 69A of the Act, in light of arguments for the Id. counsel for the assessee. We find that, although the assessee claims to have received cash from customers toward sale proceeds, but could not justify its explanation with necessary evidence in light of notification issued by the Government of India and RBI. At the same time, when the Assessing Officer has accepted the fact that there is no adverse or abnormal increase in sales during demonetization period when compared

to earlier period, he ought to have find out the exact amount of sale proceeds received by the assessee in cash during demonetization period. Neither the assessee proved its case with necessary evidence nor the Assessing Officer had proved with conclusive evidence that cash deposits during demonetization period is unexplained money of the assessee. Under these facts and circumstances of the case, the only option left with us is to settle the dispute between the assessee and the Assessing Officer is by way of estimation of source for cash deposits. Since, the assessee is engaged in the business of distribution of ITC products, and the main sales of the assessee is in cash, I am of the considered view that, the reasonable amount of cash deposits during demonetization period is out of sales proceeds received in cash. Therefore, considering the facts and circumstances of the case, I direct the Assessing Officer to accept 50% of cash deposits of Rs. 43,05,820/- is out of sale proceeds received in cash and balance 50% as unexplained money of the assessee taxable u/s. 69A of the Act. In so far as case laws relied upon by the Ld. Counsel for the assessee and Id. DR, I find that there is no ratio laid down in those cases in respect of source for cash deposits and findings given in those case is based on

different facts of those case. Therefore, the case laws relied upon by both the parties cannot be applied to facts of the present case.

8. In this view of the matter and by considering facts and circumstances of this case, I direct the Assessing Officer to accept source for cash deposits to the extent of 50% on additions made u/s. 69A of the Act is out of sale proceeds received in cash and confirm balance 50% additions made u/s. 69A of the Act.

9. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the court on 23<sup>rd</sup> August, 2023 at Chennai.

**Sd/-**

(मंजुनाथ. जी)

**(MANJUNATHA. G)**

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 23<sup>rd</sup> August, 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