

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.201/Hyd/2023		
Assessment Year: 2017-18		
Income Tax Officer Ward 1(1) Tirupati (Appellant)	Vs.	Renigunta Srinivasa Chits (P) Ltd, Chittoor PAN:AAGCR2691N (Respondent)
Assessee by:	Shri K.C. Devdas, CA	
Revenue by:	Shri KPRR Murthy, CIT(DR)	
Date of hearing:	18/07/2023	
Date of pronouncement:	20/07/2023	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the Revenue is directed against the order dated 3.02.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. Facts of the case, in brief, are that the assessee is a company engaged in running of chit-fund business. It filed its return of income on 31.10.2017 admitting taxable income of Rs.12,94,080/-. The case was selected for complete scrutiny under CASS and statutory notices u/s 143(2) & 142(1) were issued calling for certain details to which the AR of the assessee appeared before the Assessing Officer and filed various details from time to time.

2.1 During the course of assesment proceedings, the Assessing Officer noted that the assessee has deposited total cash of Rs.1,32,77,186/- into the bank account. On being questioned about the source of the same, it was explained that an amount of Rs.1,01,86,818/- was the opening balance available which was deposited into the following bank accounts:

A)	Saptagiri Grameena Bank	Rs.48,80,779
B)	State Bank of India	<u>Rs.53,06,039</u>
	Total	Rs.1,01,86,818 =====

2.2 It was further submitted that the cash deposited in the Bank account after 12.11.2016 and before 31.12.2016, the assessee has not only deposited Specified Bank Notes (SBNs) but also the new currency notes along with other denominations like Rs.100, Rs.50, Rs.20 and Rs.10 notes. The assessee submitted that the collection of cash and depositing the same into the Bank Account is a routine process and carried out during the entire year. It was argued that the company is functioning from a rural area i.e. Renigunta where most of the subscribers belong to small saving holders, teachers and retail business people who deal with cash most of the times. The assessee also submitted that the cash collected during demonetization period is purely an unavoidable situation because the company has about Rs.43 lakhs of bad debts which was outstanding from the prized subscribers.

2.3 However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and made an addition of Rs.1,32,77,186/- u/s 69A of the I.T. Act by recording the following:

“5.3 Coming to the present issue on hand, it is not in dispute that the assessee has carried on his business operations and collected cash from the subscribers during the demonetization period, Once the assessee says that it had carried on the business operations even during demonetization period, it has to be understood that It has received the money in legal tender only but not in SBNs, because from 09.11.2016 onwards, the SBNs are no longer money but a mere piece of paper as between the assessee company and the chit subscriber and do not constitute money in legal tender.

5.4 To conclude, as the assessee 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 business operations during the demonetization period by reporting such collections is not acceptable. Further, as the assessee has deposited the SBNs held by it in to its 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 in to his bank account, the SBNs deposited in bank during demonetization period by the assessee represents the SBNs held by the company as on 08.11.2016 and the onus is on the company to prove the sources for such SBNs in the absence of which it is treated as unexplained money and brought to tax under sec. 69A of the Income-tax Act.

6.5 In view of the above discussion, the entire cash receipts admitted by the assessee of Rs.1,32,77,186/- November, 2016 and December, 2016 of are brought to tax under sec. 69A of the Act. Further, penalty proceedings under sec. 271 AAC of the Act in respect of unexplained income are initiated.”

3. Before the learned CIT (A)-NFAC, the assessee filed certain additional evidences and written submissions based on which the learned CIT (A)-NFAC deleted the addition by observing as under:

“I have considered statement of facts, grounds of appeal, written submissions and the Assessment Order dated 31.12.2019.

In the case of the appellant, the Assessing Officer noticed that there was cash deposited during the demonetization period. Hence, the details relating to the cash deposited into the bank account was called for. The cash deposited was claimed to be Rs.1,32,77,186/- and an amount of Rs.1,01,86,818/- was the opening balance available which was deposited into bank accounts of the appellant.

Further, in the written submissions the appellant has stated the amount deposited Rs.1,01,86,818/- was done before the demonetization period (which was collected in the previous month and upto the date of

08.11.2016(Rs.48,80,779/- deposited in Sapthagiri Grameena Bank and Rs.53,06,039/- deposited in SBI account.)

And has further, explained that the cash remitted during the demonetization period was not only deposited SBN notes but also the new cash notes along with other denomination like 100s, 50s, 20s and 10s. and also it was a normal practice of the company to collect and deposit cash from its subscribers every month as the company is situated in the rural area i.e. Renigunta, where most of the subscribers belong to small saving holders, teachers and retail business people-who dealt cash mostly.

It has been stated that, the cash collected during the demonetization period was due bad debts about Rs.43 lakhs and the amounts were collected from Prized subscribers (who lifted the chit and not paid the dues regularly).

Further, it is submitted by the appellant that the amount is collected against the dues from the chit subscribers is not entire amount as income of the appellant. The Chit fund agent will get commission at the rate 5% is the maximum amount.

This data is verified from the books of accounts submitted, Random verification done also has proved that Chit Subscriptions were received in cash and the same is the source of the Bank deposits.

Where the source of deposit is entered duly in the Books, the same cannot be treated as unexplained. Prima facie verification indicates that the nature of Business involves large scale cash receipts.

The same were duly reflected in the Books of accounts. Thus, the source for cash deposits stands explained and the assessee has offered his commission as income. In view of the above, the appeal is allowed."

4. Aggrieved with such order of the learned CIT (A) the Revenue is in appeal before the Tribunal by raising the following grounds:

"1. The Ld. CIT(A) erred in deciding the issue in favour of the assessee based on the additional evidence without referring the matter for remand proceedings is in violation of Rule 46A of I.T. Rules, 1962.

2. The Ld. CIT(A) erred in facts & circumstances of the case, as the assessee is not one of the entities authorized by the Central Government to accept SBNS during demonetization period in exchange for goods/services.

3. The Ld. CIT(A) erred in facts & circumstances of the case in accepting the assessee submission that assessee collected bad debts as well as amounts from prized subscribers despite the fact that assessee was not

authorized to collect demonetized currency notes. Such collection was not acceptable as per the government notification and acceptance of this contention of assessee by Ld. CIT(A) is bad in law.

4. The Ld. CIT(A) erred by not taking into account Notification in S.O.No. 3407(E) dated 08.11.2016 issued by the Central Government withdrawing the legal tender status of SBNS w.e.f. 09.11.2016 but permitted the deposit of such SBNS held by a person in to bank account and the SBNS deposited in bank during demonetization period by the assessee represent the SBNS held by the company as on 08.11.2016 and the onus is on the company to prove the sources for such SBNS, in the absence of which, it is treated as unexplained money and brought to tax under Sec. 69A of the Income-tax Act, 1961.

5. Any other ground that may be urged at the time of hearing. "

5. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A)-NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.1,32,77,186/- being the cash deposited by the assessee in the Bank accounts during demonetization period on the ground that the assessee has accepted the specified bank notes during the demonetization period in exchange for goods/services and the assessee company could not explain the source of such specified bank notes. We find the learned CIT (A)-NFAC deleted the additions, the reasons of which have already been reproduced in the preceding paragraph. We find the order of the learned CIT (A) is a very cryptic one and does not address the points raised by the Assessing Officer. The learned CIT (A) has neither called for a remand report from the Assessing Officer when the assessee filed certain additional evidences nor gave an opportunity to the Assessing Officer to go through the same and submit his comments. Merely because the source of the deposit is duly entered in the books, the same cannot be treated as explained especially when the specified bank notes were accepted during the demonetization period in violation

of the guidelines issued by the Central Govt. and the assessee failed to prove the source of deposit of the specified bank notes during the demonetization period. Since the order of the learned CIT (A) NFAC is also silent as to how much was the money deposited in specified notes and the money in the denomination of Rs.100, Rs.50, Rs.20 and Rs.10, etc., therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the learned CIT (A)-NFAC with a direction to pass a speaking order since he has deleted the addition merely on the basis of the submissions made by the assessee before him. Needless to say, the CIT (A)-NFAC shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and order accordingly. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

6. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 20th July, 2023.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 20th July, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Income Tax Officer Ward 1(1) Aayakar Bhavan, KT Road, Tirupati
2	M/s. Renigunta Srinivasa Chits (P) Ltd., H.No.3-155, Bajaru Veedhi, Renigunta, Tirupati 517520
3	PR.CIT, Tirupati
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order