IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. MADHUMITA ROY, JUDICIAL MEMBER

ITA Nos.836 & 837/Bang/2023
Assessment Years: 2017-18

Sri Girish Mallesh No.399, 14th Main, 3rd Stage Basaveshwaranagar Bangalore 580 079 **PAN NO : AJQPM3069A**	**Vs.**	ACIT Circle-6(2)(1) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Shri V. Srinivasan, A.R.
Respondent by	:	Shri Ashwin D Gowda, D.R.

Date of Hearing	:	19.12.2023
Date of Pronouncement	:	19.12.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These two appeals by assessee, one is emanated relating to the quantum addition confirmed by NFAC vide order passed u/s 250 of the Income Tax Act, 1961 (in short "The Act") for the assessment year 2017-18 and another one is with regard to confirming penalty by NFAC for the assessment year 2017-18 passed u/s 250 of the Act, both dated 19.10.2023.

2. First, we will take up the quantum appeal filed by the assessee in ITA No.837/Bang/2023. The assessee has raised following grounds of appeal:

1. *"The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

2. *The appellant denies himself liable to penalty imposed U/s 271AAC[1] of the Act of Rs. 1,50,606/- being 10% of the tax payable u/s 115BBE of the Act of Rs. 15,06,062/- under the facts and in the circumstances of the appellant's case.*

3. *The learned CIT[A] failed to appreciate that the levy of penalty U/s 271AAC[1] of the Act is not automatic and that in the absence of any justification to make the addition u/s. 68 of the Act, the penalty ought not to have been imposed ought under the facts and in the circumstances of the appellant's case.*

4. *The learned CIT[A] failed to appreciate that, mere additions and disallowance in the order of assessment would not automatically warrant the penal provisions, consequently the penalty imposed by the learned A.O. deserves to be cancelled under the facts and in the circumstances of the appellant's case.*

5. *Without prejudice to the above, the penalty levied is excessive and liable to be reduced substantially.*

6. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

2.1 Facts of the issue are that the assessee is an individual who carries on business of running of Bar and Restaurant for the past several years. That apart, the assessee also derives income from house property and other sources. The assessee has been maintaining books of account for the business carried on and the same is also subject to audit u/s 44AB of the Act.

2.2 For the year under appeal, the assessee e-filed his return of income on 27/10/2017 declaring a total loss of Rs.25,25,971/- from the aforesaid sources of income. Along with the return of income, the assessee had filed the audited financial and the report of the Accountant in Form 3CB and 3CD dated 27/10/2017.

ASSESSMENT PROCEEDINGS:

2.3 The case of the assessee was selected for scrutiny under CASS and accordingly, statutory notice u/s. 143[2] of the Act dated 29/08/2018 was issued and served on the assessee through ITBA. Thereafter, notice u/s.142[1] dated 23/08/2019 requiring the assessee to furnish details/produce documents as well as evidences on the points as mentioned in the questionnaire along with the said notice.

2.4 Furthermore, in course of the assessment proceedings, the learned A.O. had also issued show cause notice dated 11/11/2019 calling upon the assessee to furnish the details as per proforma, mentioned therein relating to the evidence in the form of pay-in-slips or bank certificate regarding deposit of cash in old and new currency separately during demonetization period from 09/11/2016 to 30/12/2016, justify the cash balance as on 08/11/2016 with evidence / books of account.

2.5 In response to the above 2 notices issued by the learned A.O., the assessee furnished his replies vide letters dated 14/11/2019 submitting all the details called for.

2.6 The assessee had furnished the details of the bank accounts maintained along with the details of the cash deposits during the period of demonetization. It has to be mentioned here that in respect of the break-up of the cash deposits made in the tank in Specified Bank Notes [SBNs] and new currency during the period of demonetization, the appellant submitted that he did not have the break-up and was writing to the banks to furnish the same. The assessee also furnished the cash, balance on 08/11/2016 as per the cash book as Rs. 17,29,456.29. It was explained that the cash deposits made in the bank accounts during the period of demonetization was from out of the cash on hand and sales made during the said period.

2.7 Thereafter, the learned A.O. issued another show cause notice dated 07/12/2019 in which he pointed out that the total cash deposits made during the period of demonetization was Rs.42,39,560/- and the closing cash in hand as on 08/11/2016 was Rs.17,29,456.29. The learned A.O. stated that the appellant has not given the details of deposits made in SBNs and new currency and hence, it would be treated the entire cash deposits made during the period of demonetization was in SBNs and the assessee had transacted in the same despite not being, in the exempted category as per gazette notification dated 09/11/2016. The learned A.O. called upon the

assessee to state as to why the difference of the cash deposits over the closing cash in hand on 08/112016 should not be treated as unexplained cash credit u/s.68 of the Act.

2.8 In response to the aforesaid show cause notice, the assessee made his submissions vide letter dated 10/12/2019 in which the assessee stated that he did not have the break-up of the cash "deposited in the bank in the Specified Bank Notes [SBNs] and new currency. However, the assessee stated that he had written to the banks for giving the said break-up of the cash deposits made during the period of demonetization and 2 banks had given the details, which are as under:-

Name of the bank and Account No.	Cash deposit in SBN's during demonetization	Other Non SBN's cash deposit made	Total Cash Deposit from 09/11/2016 to 30/12/2016
Vijaya Bank CA 107900301000107	13,17,000	8,30,500	21,47,500
Karur Vysya Bank 1326172000000204	1,05,000	2,10,500	3,15,500
Total	14,22,000	10,41,000	24,63,000

2.9 The assessee had also filed bank certificates from the said bankers i.e. Vijaya Bank (Bank of Baroda) dated 11.12.2019 and Karur Vysya Bank dated 9.12.2019 in support of the above.

2.10. The assessee also furnished his objections to treat the cash deposited in bank during the period of demonetization in excess of the cash balance as per books of accounts as on 08/11/2019 as unexplained cash credit u/s. 68 of the Act on the ground that all these cash deposits were duly recorded in the books of account and it cannot be held that the SBNs deposited in the bank out of sales recorded and offered to tax during the demonetization period was unexplained VAT return in Form 240 filed by the

assessee in support of the sales made during the period of demonetization and the entire year was also filed.

2.11 Thereupon the learned A.O. concluded the assessment by passing the order u/s.143[3] dated 23/12/2019 by assessing on a total income of Rs.25,10,100/- as unexplained cash credit u/s.68 of the Act and brought as the total income-of the assessee liable to tax u/s. 115BBE of the Act. In the impugned order, the learned A.O. has held as follows:

a) That the assessee had filed all the details in ITBA except for currency-wise cash deposits made;
b) That, the total cash deposits made by the assessee in various bank accounts during the period of demonetization was Rs.42,39,560/- whereas the closing cash as on 08/11 /2016 was Rs.17,29,456/-.
c) That, the assessee could not deposit SBNs in excess of cash on hand held on 08/11/2016 as per the gazette notification of the Ministry of Finance dated 08/11/2016 and hence, the said amount was liable to be treated as unexplained cash credit u/s. 68 of the Act.

2.12 Furthermore, in the impugned order, the learned A.O. also noted and dealt with the contentions of the assessee with regard to the break-up of the deposits made in SBNs and new currency that was submitted vide the letter dated 10/12/2019. Briefly put, the assessee had submitted that the SBNs deposited in Vijaya Bank and Karur Vysya Bank was Rs.13,17,000/- and Rs.1,05,000/- respectively and the new currency and old notes of Rs.100, 50, 20 and 10 denominations that were deposited in these 2 bank accounts during the period of demonetization was Rs.8,30,500/- and Rs.2,10,500/- respectively aggregating to a sum of Rs.10,41,000/-. In other words, the assessee submitted that cash of Rs.10,41,000/- out of the total cash of Rs.42,39,560/- was not in SBNs and the same had to be excluded. The assessee also specifically stated that he was in the process of obtaining the break-up details from other

banks and hence, these figures will have to be modified after receipt of the same.

2.13 Even this contention of the assessee was rejected by the learned A.O. in the impugned order on the ground that the assessee did not give currency- wise details of cash in hand of Rs.17,29,560/- held as on 08/11/2019 from which the deposits to the extent of Rs.14,22,000 [in SBNs in the two bank accounts] was available for deposit. Hence, the A.O. treated the amount of Rs.25,10,103/- being the entire cash of Rs.42,39,560/- deposited by the assessee during the period of demonetization in excess of closing cash on 08/11/2016 of Rs.17,29,560/- as unexplained cash credit u/s.68 of the Act. Thus, the solitary issue for our consideration relates to the impugned addition of Rs. 25,10,100/- made u/s. 68 of the Act.

3. The ld. CIT(A) observed that the Ld. A.O. has added Rs.25,10,103/- out of the total cash deposit of Rs.42,39,560/- on account that no information was submitted by the assessee before the A.O. The ld. A.O. has given benefit of Rs.17,29,456/- which was shown as cash balance on 08.11.2016. He observed that in the para 4.1 of the assessee's submissions that the assessee continued to receive currency in the old currency notes known as SBN. Though it was illegal to accept cash in the SBNs after 08.11.2016. The assessee failed to give any specific reply against the findings of the Ld. A.O. The assessee further submitted that he is producing the breakup of deposits during the appellate proceedings which could not be produced before the A.O. He did not agree with the submissions of the assessee to re-examine his new submissions. As the assessee has already admitted he was doing illegal activity by transacting in the SBNs, the ld. CIT(A) held the order of the A.O. is as per law and addition made by him Confirmed.

3.1. Consequent to this, the ld. AO has invoked the provisions of section 271AAC(1) of the Act and levied penalty at 10% of tax to be evaded which worked out at Rs.1,50,606/-. The same has been

confirmed by NFAC. Against these orders, the assessee is in appeal before us.

4. The ld. A.R. submitted that under the provisions of section 68 of the Act, assessee's liability is to explain the nature and source of money credited in his books of accounts in the relevant assessment year. He submitted that assessee has explained the nature as well as source of the deposit into assessee's bank account, which is from the sales made by the assessee in the assessment year under consideration and same has been shown as "receipts" in the P&L account and it has gone into the computation of income of the assessee for the assessment year under consideration. Accordingly, he submitted that the assessee has discharged his responsibility u/s 68 of the Act. Further, sales receipts since duly recorded in the books of accounts, there is no reason to treat the same as unexplained income of the assessee. According to the ld. A.R., merely because demonetization notes ceased to be legal tender, it does not mean that amount collected by assessee from its customers towards sales would become unexplained income of the assessee. It was also submitted by ld. A.R. that the Reserve Bank of India ("RBI") issued a series of notifications with regard to deposit of demonetized notes from 8.11.2016 onwards. It further clarified that these deposits are collected by assessee prior to issue of notification on 27.2.2017, which is effective from 31st day of 2016. As per the relevant provisions of Specified Bank Notes (Cessation of Liabilities Act, 2017) in terms of which section 5 reads as follows:

"5. On and from the appointed day, no person shall, knowingly or voluntarily, hold, transfer or receive any specified bank note:
Provided that nothing contained in this section shall prohibit the holding of specified bank notes-
(a) by any person-
(i) up to the expiry of the grace period; or
(ii) after the expiry of the grace period,-
(A) not more than ten notes in total, irrespective of the y denomination;
or
(B) not more than twenty-five notes for the purposes of study, research or numismatics;

(b) by the Reserve Bank or its agencies, or any other person authorised by the Reserve Bank;

(c) by any person on the direction of a court in relation to any case pending in the court."

4.1 Thus, he submitted that the bar on holding and transferring or receiving SBNs is only from the appointed day which is 31/12/2016 in terms of Section 2(1)(a) of the Specified Bank Notes (Cessation of Liabilities Act), 2017. In view of the above, there is no violation by the appellant of any Law in accepting SBNs for the purpose of cash sales and considering it to be a due discharge of debt. Hence, it cannot be said that the said SBNs deposited by the appellant was unexplained cash credit/ unexplained money for being taxed u/s. 115BBE of the Act having regard to the provisions of section 68 of the Act.

4.2 He further submitted that at this stage, reference may be made to the provisions of section 68 of the Act. It has been provided under section 68 of the Act that any sum credited in the books of the assessee for any previous year is not explained or the explanation about the nature and source of the credit in the books of account is not satisfactory in the opinion of the Assessing Officer, then, the credit may be deemed to be income of the assessee of the said financial year. In the instant case, there is no dispute that the entire sales made by the assessee are recorded in the books of account and offered to tax as income and the cash deposits made in the bank account are also recorded in the books of account maintained by the assessee. Thus, it cannot be said that the assessee has not given any explanation about the nature and source of the said money deposited in the bank account. The learned A.O. has simply held that the explanation of the assessee offered about the nature and source of the money is not satisfactory on account of the fact that the SBNs were accepted by the assessee after demonetization and the same was not permitted. Thus, it is submitted that the provisions of section 68 of the Act are not attracted to the case of the assessee as the assessee has explained the nature and source of the money and hence, the

impugned addition made invoking the provisions of section 68 of the Act is misconceived and the same is liable to be deleted. It is prayed accordingly.

4.3 Without prejudice to the above, he further submitted that the addition of Rs. 25,10,100/- made by the learned A.O. is after accepting the figure of sales reported by the assessee for the year under appeal. The learned A.O. cannot take a contrary view towards the source of cash for the deposit of Rs. the-period of demonetization which has-been explained out of the cash sales declared by the assessee which is supported by the VAT Returns filed. Thus, the addition of Rs. 25,10,100/- u/s 68 of the Act amounts to double taxation and hence, in ^he event, the addition is upheld, the corresponding figure of sales has to be reduced and this would increase the loss reported by the assessee.

4.4 Thus, the ld. A.R. submitted that the learned A.O. fell in error in rejecting the explanation tendered by the assessee while accepting the turnover declared by him. In this view of the matter, it is alternatively prayed that the sales to the extent of the addition made i.e. 25,10,100/- be excluded from the turnover of the assessee and consequently the loss be increased and allowed to be carried forward as the action of the learned A.O. in taxing the assessee on the sales made as well as the cash deposited is unjustified.

4.5 With regard to the invocation of the provisions of section 115BBE taxing the aforesaid addition made at the rate of 60%, he submitted that the provisions of Section 1158BE of the Act are not attracted to the case of the assessee since there is no cause to sustain the addition made u/s 68 of the Act for the reasons detailed earlier. Hence, he submitted that the tax determined in terms of section 115BBE of the Act deserves to be vacated.

4.6 The ld. A.R. relied on the order of the Bangalore Bench of Tribunal in the case of Anantpur Kalpana in ITA No.541/Bang/2021

dated 13.12.2021 for the AY 2017-18, wherein the addition has been deleted.

5. On the other hand, ld. D.R. submitted that the assessee was barred from collecting SBN notes after demonetization by the Government of India and hence, the ld. AO has rightly made the impugned addition to be sustained.

6. On the other hand, the assessee has deposited SBN nots by inflating the sales and it has to be verified by the ld. AO to see as compared to the average daily sales before the demonetization period and if the assessee's sales during the demonetization period found to be more than the average sales of prior to the demonetization, then that difference amount cannot be considered as receipt from sales and that portion has to be bring to tax by applying section 68 of the Act.

7. We have heard the rival submissions and perused the materials available on record. In the present case, the addition has been made on account of deposit of SBN notes to following bank accounts during the demonetization as below:

Name of the bank and Account No	Cash deposit in SBN's during demonetization	Other Non SBN's cash deposit made	Total Cash Deposit from 09/11/2016 to 30/12/2016
Vijaya Bank CA 107900301000107	13,17,000	8,30,500	21,47,500
Karur Vysya Bank 1326172000000204	1,05,000	2,10,500	3,15,500
Bank of Baroda CA 107900301000107	9,06,500	4,04,500	13,11,000
Karnataka Bank SB 3452500100077201	500	19,500	20,000

Karnataka Bank SB 3092500101242601	900 [Rs 1000 given out of which Rs 100 was returned to the appellant]	900	1,800
SBI SB 64055157757	2,05,000	43,760	2,48,760
Bank of Baroda 1139010100020894	1,95,0051		1,95,000
Total	27,29,900	15,09,660	42,39,560

7.1 To support this, the assessee has filed the confirmation letters from the banks as below:

[a] Copy of certificate from Bank of Baroda for Account No. 107900301000107 dated 09/12/2019.

[b] Copy of certificate from Karnataka Bank for Account No. 3452500100077201 dated 11/12/2019.

[c] Copy of certificate from Karnataka Bank for Account No. 3092500101242601 dated NIL

[d] Copies of certificate from SBI for Account Ho. M065157757 dated 25/03/2021 [deposits made in Holenarsipur Branch] and 30/03/2021 [deposits made in B.M. Road Branch].

[e] Copy of certificate from Bank of Baroda for Account No. 1139010100020894 dated 15/04/2021.

7.2 The ld. AO has considered that out of deposit of Rs.42,39,560/-, given a credit of Rs.17,29,456/- towards the opening cash balance as on 8.11.2016 and brought to tax an amount of Rs.25,10,100/-. Thus, out of deposit of SBN notes of Rs.27,29,900/- he has considered only Rs.25,10,100/- towards addition u/s 68 of the Act. Further, the ld. AO has admitted that this amount of Rs.27,29,900/- which has been deposited to bank account has been included in the

sales disclosed by assessee in its profit & loss account. The ld. AO has not doubted the cash sales effected by the assessee by collecting SBN notes. Once the ld. AO accepted the figure of sales in the P&L account, which has gone into the computation of income of the assessee, that sales cannot be doubted by ld. AO to hold that it is unexplained credit on account of deposit of SBN notes into bank accounts. The sales offered by the assessee in its P&L account has been accepted by VAT authorities and ld. AO has also accepted it as a sales. Thereafter, he precluded from disturbing the sales so as to apply section 68 of the Act. This view of ours is fortified by the order of the SMC Bench Bangalore, in the case of Anantpur Kalpana cited (supra), wherein held as under:

"6. I have heard the rival submissions. Learned Counsel for the assessee submitted that both the AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. He submitted that the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It was also submitted that the assessee was having only one source of income from beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. It was also submitted that the government permitted all to deposit old demonetized notes upto 31.12.2016. Since the amounts deposited were sale proceeds of business and the income from the business have already been taxed, the impugned addition should be deleted. Our attention was also drawn to section 26(2) of the RBI Act, 1934 which provides that government can specify certain notes as not legal tender. It was argued that if there is any violation of the statutory provisions, the consequences will be only under the relevant provisions of RBI Act, 1934 and those violations cannot lead to any addition under section 68 of the Act. The learned Counsel also placed reliance on the following judicial pronouncements rendered on identical facts of the case as that of the assessee. Hon'ble Kolkata Tribunal in the case of CIT Vs. Associated Transport Pvt. Ltd. reported in 84 Taxman 146 wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, therefore, held that there was no reason to treat this amount as income from undisclosed sources and it was not a fit case for treating the said amount as concealed income of the assessee. The revenue moved to Hon'ble Calcutta High Court against the order of the Hon'ble Tribunal and the Hon'ble High Court has confirmed the order of the Tribunal while deleting the penalty; the Hon'ble High Court of Calcutta held as under:

> *"8. The Tribunal was of the view that the assessee had sufficient cash in hand. In the books of account of the assessee, cash balance was usually more than Rs.81,000/-. There is no reason to treat this amount as income from undisclosed sources. It is not a fit case for treating the amount of Rs.81,000/- as concealed income of the assessee and consequently imposition of penalty was also not justified in this case."*

7. Further reliance is placed on the decision of the Hon'ble Vishakapatnam Tribunal in the case of ACIT Vs. Hirapanna Jewelers in ITA No. 253/Viz/2020 wherein, the Hon'ble Tribunal while considering the issue of implication of Sec. 68 of the Act during demonetization held as under:

> *"9. In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the cash receipts represent the sales which the assessee has rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House (Supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra),Hence, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.*
>
> *10. The assessee filed cross objections supporting the order of the Id. CIT(A). Since, the appeal of the revenue is dismissed, the cross objection filed by the assessee becomes infructuous, hence, dismissed.*
>
> *11. In the result, appeal of the revenue as well as the cross objection of the assessee are dismissed."*

8. Learned DR reiterated the stand of the Revenue as reflected in the order of the CIT(A).

9. I have carefully considered the rival submissions. Both the AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It is also on record that the assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of CIT Vs. Associated Transport Pvt. Ltd.

reported in 84 Taxman 146 on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon'ble Vishakapatnam Tribunal in the case of ACIT Vs. Hirapanna Jewelers in ITA No. 253/Viz/2020 on identical facts held that when cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted. "

7.3 Further, coordinate bench in the case of Prathamika Krushi Pattina Sahakari Sangha Niyamitha Itagi in ITA No.593/Bang/2021 dated 1.6.2022 wherein held as under:

"5. I heard the parties and perused the record. I notice that an identical issue has been decided in favour of the assessee in the case of Bhageeratha Pattina Sahakara Sangha Niyamitha (supra) as under:-

> *"12. The last issue relates to addition made u/s 68 of the Act. The A.O. noticed that the assessee society has deposited "Specified bank notes" (demonetized notes) in the account maintained by it with CDCC Bank, Hosadurga as detailed below:-*

Date of deposit	*No. of notes of Rs.1000*	*No. of old notes of Rs.500*	*SBN deposit*
10.11.16	*700*	*600*	*10,00,000*
11.11.16	*463*	*1150*	*10,38,000*
12.11.16	*38*	*137*	*1,06,500*
13.11.16	*138*	*330*	*3,03,000*
Total	*1339*	*2217*	*24,47,500*

> *When enquired about the sources for making the above deposits, the assessee submitted that they represent cash received by it from its members towards repayment of loan, Pigmy collection, etc. The A.O. noticed that the Government has announced demonetization on 8.11.2016, whereby then existing Rs.1000/- & Rs.500/- currency notes were declared not to be legal tender. The A.O. took the view that the assessee has collected the above said amount after 8.11.2016, which is not permitted. Accordingly, the A.O. took the view that the above said amount represents unexplained money of the assessee and assessed the same u/s 68 of the Act. The A.O. also charged income tax on the above*

said deposit as per provisions of section 115BBE of the Act. The Ld. CIT(A) also confirmed the same.

13. The Ld. A.R. submitted that, under the provisions of section 68 of the Act, the assessee's liability is to explain the nature and sources of the money. He submitted that the assessee has explained the nature as well as sources i.e. the above said deposit was made out of its collections in the ordinary course of carrying on business, i.e., it represented money deposited by its members towards repayment of loans, pigmy deposits, etc. Accordingly, he submitted that the assessee has discharged its responsibility u/s 68 of the Act. Further, the collections and deposits have been duly recorded in the books of account and hence, there is no reason to treat the same as unexplained money of assessee. The Ld. A.R. further submitted that merely because demonetized notes ceased to be legal tender, it does not mean that the amount collected by the assessee from its members would become unexplained money of the assessee. The Ld. A.R. also submitted that the Reserve Bank of India issued a series of notifications with regard to the deposit of demonetized notes from 8.11.2016 onwards. He submitted that the RBI, vide notification dated 14.11.2016, clarified that District Central Co-operative Banks can allow their existing customers to withdraw money from their accounts up to Rs.24,000/- per week. It further clarified that no exchange facility against demonetized notes or deposit of such notes should be entertained by them. In view of the above said notification, the assessee has stopped collecting the demonetized notes from 14.11.2016 onwards. Accordingly, the Ld. A.R. submitted that the above said deposits were collected by the assessee prior to 14.11.2016 and it cannot be considered as violation of any of the Provisions of the Act. Accordingly, he submitted that the A.O. was not justified in invoking the provisions of section 68 of the Act.

14. I heard Ld. D.R. on this issue and perused the record. I notice that the A.O. has not doubted the submissions of the assessee that the above said amount of Rs.24,47,500/- represents collection of money in the normal course of carrying on of business of the assessee, i.e., it represents money remitted by the members of the assessee society towards repayment of the loan taken by them and also towards pigmy deposits, etc. The Ld A.R submitted that the assessee has duly recorded in its books of account the transactions of collections of money as well as deposits made into bank account. Thus, I notice that the assessee has explained the nature and source of the above said amount of Rs.24,47,500/-, which was in-turn deposited by the assessee society in its bank account and further, all these transactions have been duly recorded in the books of account. Hence, the above said deposits cannot be considered as "unexplained money" in the hands of the assessee.

15. The case of the A.O is that the assessee has collected the demonetized notes after 8.11.2016 in violation of the notifications issued by RBI. Accordingly, he has taken the view that the above said amounts

> *represents unexplained money of the assessee. I am unable to understand the rationale in the view taken by A.O. I noticed that the AO has invoked the provisions of sec.68 of the Act for making this addition. I also noticed that the assessee has also complied with the requirements of sec.68 of the Act. The AO has also not stated that the assessee has not discharged the responsibility placed on it u/s 68 of the Act. Peculiarly, the AO is taking the view that the assessee was not entitled to collect the demonized notes and accordingly invoked sec.68 of the Act. I am unable to understand as to how the contraventions, if any, of the notification issued by RBI would attract the provisions of sec. 68 of the Income tax Act. In any case, I notice that the assessee has also explained as to why it has collected demonetized notes after the prescribed date of 8.11.2016. The assessee has explained that it has stopped collection after the receipt of notification dated 14.11.2016 issued by RBI, which has clearly clarified that the assessee society should not collect the demonetized notes. Accordingly, I am of the view that the deposit of demonetized notes collected by the assessee from its members would not be hit by the provisions of section 68 of the Act in the facts and circumstances of the case. Accordingly, I set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete this disallowance."*

6. In the instant case, there is no dispute with regard to the fact that sources for making deposit of Rs.36.36 lakhs by the assessee into its bank account are the money collected from its members. The AO is also not doubting that all the SBNs have been collected by the assessee from its members. Accordingly, following the above said decision, I hold that the addition made u/s 68 of the Act is not justified. The Ld A.R also submitted that the SBNs have been collected by the assessee prior to the appointed date of 31.12.2016, i.e., only from 31.12.2016, the assessee is precluded from accepting SBNs from its members. In this view of the matter, the reasoning relating to contravention of rules of RBI also fails.

7. Accordingly, I set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned disallowance.

8. Since I have decided the issue urged on merits in favour of the assessee, the legal issue urged by the assessee shall become academic. Hence, I do not find it necessary to adjudicate it.
9. In the result, the appeal filed by the assessee is allowed."

7.4 Further, Ahmedabad Bench in the case of Ashapura Petro Chem Marketing Pvt. Ltd. in ITA No.511/Ahd/2020 dated 18.10.2023 wherein held as under:

7. *We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. The addition made by the Ld. Assessing Officer of Rs. 1,24,59,500/- u/s. 68 of the Act mainly on the ground that the assessee was not authorized to accept Specified Bank Notes during demonetization period as observed in the assessment order. Thus it is an admitted fact that the cash deposit is on account of sale of petrol, diesel and other*

petroleum products. These sales have been duly recorded in the books of accounts and appropriate VAT taxes also collected by the assessee. The Manager of the assessee company also filed a Notarized Affidavit dated 29-03-2017 accepting the above facts during the course of assessment proceedings. Thus it is clearly established that the Ld. A.O. on one side accepting the source of cash deposit and on the other side, he is making the cash deposit as unexplained cash credit which is self-contradictory. The Assessing Officer following the Circular dated 08-11-2016, which is not applicable since Para (e) of the Circular deals with the cases of purchase of petrol, diesel etc., and not to sale of petrol, diesel by accepting Specified Bank Notes. Thus the invocation of Section 68 is invalid in law.

7.1 Further the assessee filed complete details of Purchase register, Sales register, Cash Book, Bank statement, Month-wise details of purchase and sales, Copies of VAT returns etc. However the Ld. A.O. is not able to find any defect in the books of accounts, except general statements made in the assessment order. Though the A.O. has doubted the sales made during the year, he is not doubted the purchases made or stock maintained by the assessee during the year. Further the assessee also demonstrated the fluctuations in the sales during the entire period and there is no drastic increase in sales during the period of demonetization. It is further noticed that it is the month of May 2016 sales reported at 84.81 lacs. Similarly, in the month of November 2016 (demonetization period), the sales is reported at 1.04 crores which is not found to be drastic higher figure. Thus the deletion made by the Ld. CIT(A) does not require any interference.

8. The Co-ordinate Bench of this Tribunal in the case of Shree Sanand Textiles Industries Ltd. (cited supra) held as follows:

> *"….9.6. We also note that the provisions of section 68 cannot be applied in relation to the sales receipt shown by the assessee in its books of accounts. It is because the sales receipt has already been shown in the books of accounts as income at the time of sale only.*
>
> *9.7. We are also aware of the fact that there is no iota of evidence having any adverse remark on the purchase shown by the assessee in the books of accounts. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/finding. In view of the above we are not convinced with the finding of the learned CIT(A) and accordingly we set aside the same with the direction to the AO to delete the addition made by him."*

8.1 The Co-ordinate Bench of the Bangalore Tribunal in the case of M/s. Manasa Medicals (cited supra) held as follows:

> *"….11. On the other hand, the ld. AR submitted that the assessee is covered by the Category of exempted entities who were permitted to accept SBN during the demonetization period. The ld. AR also submitted that the AO has not rejected the turnover of the assessee, but has treated the same as unexplained only for the reason that the assessee has not produced the*

prescriptions and the identity of the persons who bought the medicines with regard to the sales made. The ld. AR further submitted that the accounts of the assessee are audited and there is no discrepancy found during the audit. It is also contended by the ld. AR that the assessee has produced all the details with regard to the sales including the ledger accounts, cash book, VAT returns etc. during the course of assessment and the AO did not reject the books of accounts of the assessee. The ld. AR drew our attention to the relevant Notification wherein it is stated that for making payments in all Pharmacies on production of Doctor's prescription and proof of identity, however, there is no mandate given that the Doctor's prescription and identity of persons purchasing the medicines need to be kept for record. The ld. AR also placed reliance on the decision of Vishakapatnam Bench of the Tribunal in the case of Hirapanna Jewellers v. ACIT in ITA No.253/Viz/2020 dated 12.05.2021, where it is held that once the assessee admits the sales as revenue receipts, there is no case for making addition u/s. 68. Therefore, the ld. AR submitted that the CIT(A) has correctly allowed the appeal in favour of the assessee.

12. *We have heard the rival submissions and perused the material on record. We notice that the assessee during the course of assessment has produced various details including the books of accounts, VAT returns, details of cash deposits made in the requisite format and other details called for by the AO. In the order of assessment, the AO has brought to tax the impugned addition u/s. 68 by stating that -*

> *"3.7 I have carefully gone through the reply of the assessee. The assessee has made cash deposit during demonetization period of Rs. 2,18,38,160/-. On verification of the e-filed cash book it is seen that cash balance as on 08/11/2016 is Rs. 6,32,731/-. From this it is clear that the assessee has made cash deposit of Rs. 2,18,38,160/-, out of opening cash balance as on 08/11/2016 of Rs. 6,32,731/- & cash sales from 09/11/2016 to 31/12/2016 of Rs. 2,12,05,429/-.*
>
> 3.8 *As per RBI notification vide no. SO 3416(E) dated 09/11/2016 and subsequent SOS it is clearly mentioned that "For making payments in all Pharmacies on production of doctor's prescription and proof of identity",.. However, the assessee in the reply has stated that they are not required by law to keep the copy of the prescription for record; hence, they have not maintained it. From this it is very clear that the assessee firm has violated the RBI guidelines and accepted SBN (old notes) during demonetization by doing cash sales. Further, the assessee firm has not been authorized to accept SBN's for cash sales during demonetization period. Furthermore, the assessee has failed to furnish the details of sales made in SBN's (old notes) & Non- SBN."*

> 3.9 *In view of the above, it is concluded that the assessee has violated RBI guidelines and accepted the cash sales during demonetization period. Accordingly, the cash sales made and deposited in bank account during demonetization period is treated as unexplained cash.*
>
> 3.10 *Accordingly, cash sales during demonetization period from 09/11/2016 to the tune of Rs. 2,12,05,429/- (Rs. 2,18,38,160/- (-) Rs. Cash balance as on 08/11/2016 of Rs. 6,32,731/-) is brought to tax under the head Income from other sources as unexplained cash u/s. 68 and tax rates applicable as per provisions of section 115BBE of the Act.*
>
> 3.11 *From the above it is clear that the assessee has made cash deposits in bank accounts out of unexplained cash u/s. 68 and tax rates applicable as per provisions of section 115BBE of the Act. Hence, I am satisfied that this is a fit case for initiation of penal proceedings u/s. 271AAC of the Act."*

13. *From the above it is clear that the AO is not questioning the source of the cash deposit since he has recorded a finding that cash sales during the demonetization period is brought to tax u/s. 68 which makes it clear that it is admitted fact that sales is the source for cash deposits. The revenue is contending that there is a requirement as per the Circular that the Doctors prescriptions and identity of the persons purchasing medicines needs to be kept in record to substantiate the cash sales during demonetization period. However, from the plain reading of the said Circular, there is no specific mention as contended by the department. Further, the AO did not reject the books of accounts of the assessee and has not brought anything contrary on record to show that cash sales is not the source for the cash deposited during demonetization period. We are therefore of the opinion that there is no case here for making the addition as unexplained u/s.68. In view of this discussion, we see no reason to interfere with the order of the CIT(A)."*

8.2 The Co-ordinate Bench of the Bangalore Tribunal in the case of Sri Bhageeratha Pattina Sahakara Sangha Niyamitha (cites supra) held as follows:

"…15. The case of the A.O is that the assessee has collected the demonetized notes after 8.11.2016 in violation of the notifications issued by RBI. Accordingly, he has taken the view that the above said amounts represents unexplained money of the assessee. I am unable to understand the rationale in the view taken by A.O. I noticed that the AO has invoked the provisions of sec.68 of the Act for making this addition. I also noticed that the assessee has also complied with the requirements of sec.68 of the Act. The AO has also not stated that the assessee has not discharged the responsibility placed on it u/s 68 of the Act. Peculiarly, the AO is taking the view that the assessee was not entitled to collect the demonized notes and accordingly invoked sec.68 of the Act. I am unable to understand as to how the contraventions, if any, of the notification issued by RBI would attract the provisions of sec. 68 of the

Income tax Act. In any case, I notice that the assessee has also explained as to why it has collected demonetized notes after the prescribed date of 8.11.2016. The assessee has explained that it has stopped collection after the receipt of notification dated 14.11.2016 issued by RBI, which has clearly clarified that the assessee society should not collect the demonetized notes. Accordingly, I am of the view that the deposit of demonetized notes collected by the assessee from its members would not be hit by the provisions of section 68 of the Act in the facts and circumstances of the case. Accordingly, I set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete this disallowance."

9. Respectfully following the above judicial precedents, we have no hesitation in confirming the deletion of Rs. 1,24,59,500/- made u/s. 68 of the Act. Thus the grounds raised by the Revenue are devoid of merits, hence, the same are hereby dismissed."

7.5 In view of the above discussion, we are inclined to delete the addition made by ld. AO u/s 68 of the Act.

8. In the result, appeal of the assessee in ITA No.837/Bang/2023 is allowed.

9. ITA No.836/Bang/2023 of assessee's appeal which is relating to confirming the penalty by NFAC u/s 271AAC(1) of the Act. As discussed in earlier paras, since we have deleted the quantum addition made on the issue of deposit of SBN notes during demonetization period u/s 68 of the Act, the penalty won't survive. Hence, penalty is also deleted.

10. In the result, appeal of the assessee in ITA No.836/Bang/2023 is also allowed.

11. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 19th Dec, 2023

Sd/- **(Madhumita Roy)** **Judicial Member**	**Sd/-** **(Chandra Poojari)** **Accountant Member**

Bangalore,
Dated 19th Dec, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.