

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 904/Bang/2023
Assessment Year : 2017-18

<p>M/s. Navachetana Microfin Services Pvt. Ltd., CTS No. 3341/26, 2nd Floor, "Navachetana Heights", 1st Cross, Ashwini Nagar, Haveri – 581 110. PAN: AADCN0530G</p>	Vs.	<p>The Assistant Commissioner of Income Tax, Circle – 1, Davanagere.</p>
APPELLANT		RESPONDENT

Assessee by	:	Shri Sridhar V., CA
Revenue by	:	Shri Parithivel, JCIT DR

Date of Hearing	:	02-01-2024
Date of Pronouncement	:	31-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 02.11.2023 passed by NFAC, Delhi for A.Y. 2017-18 on following grounds of appeal:

“1. The orders of the authorities below is 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 learned CIT(Appeals)/NFAC failed to notice that appellant was not granted adequate time to reply to the show cause notice dated: 31.10.2019. The show cause notice dated. 31.10.2019 was expected to be replied on or before 8.11.2019, although there were two intervening general holidays viz., 1.11.2019 (being Kannada Rajyotsava day) and 3.11.2019 (being Sunday) There were effectively only six days time to reply, which was quite inadequate.

3. The order of the lower Authorities is bad in law. inasmuch as the AO has issued a show cause notice to treat a sum of Rs.2.96,85.500 as unexplained money as per the provisions of Section 69A of the Income tax Act. whereas in the order of assessment. the amount has been added u/s 68. The provisions of section proposed to be invoked in the show cause notice and the section resorted to in the assessment order being completely different, the order of assessment is bad in law.

4. The learned CIT-A/NFAC erred in holding that the appellant never complied with the notices as he has failed to look into the written submission filed on 22.06_2023 along with 10 enclosures and subsequently filed on 22.10.2023 after receipt of the hearing notice dt.20.10,2023 posting the case on 27.10.2023.

5. The learned lower Authorities again failed to notice that on 20.9,2019. the appellant had furnished details of cash transactions for not only the demonetization period, but also the cash recovery for the earlier two financial years, to demonstrate that the deposit of cash is not unique only for the financial year in question.

6. The addition made by the learned AO confirmed by the CIT-A/NFAC U/s 69A of the Act is opposed to the law and facts of the appellant's case in as much as the cash deposits were made by the appellant's bank accounts during the de-monetization period for which appellant had filed details during the course of appellate proceedings and thus these cash deposits were made out of known and explainable sources of funds.

7. *The learned CIT-A/NFAC is not justified in upholding the addition of Rs.2,69,85,500/- as unexplained cash deposit in bank account U/s 69A of the Act rejecting the bonafied explanation rendered under the facts and in the circumstances of the appellant's case.*

8. *The learned lower Authorities failed to appreciate that the appellant had filed cash book which depicts the receipt of cash from the loanees at various branches of the appellant which was deposited into the bank and without any thing to the contrary the addition of the receipt of cash U/s 69A /68 of the I.T. Act in the assessment order is not correct.*

9. *The learned lower Authorities failed to appreciate that the appellant had given foolproof details of cash collections made from loanees of various places . and the deposits of cash in the nearest branch, duly supported by cash book which all prove beyond reasonable doubt that the deposit of cash was in the normal course of the appellant's business.*

10. *The learned Assessing Officer failed to observe that the collection of cash deposited into its bank account during de-monetization period comprised of not only the principal part of the loan advanced, but also the interest part and the appellant has already offered to tax the interest part in its financial statements. and bringing the entire cash deposited into the bank account would amount to double taxation of the interest income twice.*

11. *The action of the learned Assessing Officer to assess the entire cash deposit which includes principal amount collected from the loanees as well. and bringing to tax the principal amount also is clearly opposed to cannon of taxation.*

12. *The learned Assessing Officer ought to have appreciated that the appellant acted as a prudent businessman and collected the debt in the form of cash, even during the de-monetization period, as was the practice so far followed, which otherwise would have become irrecoverable and compelled the appellant to write off as bad debt, resulting in cash loss.*

13. *The learned lower Authorities erred in holding that SBN till 31.12.2016 is not a legal tender failed to observe that the Government of India enacted the Specified Bank Notes (Cessation of liabilities) Act, 2017 which was*

deemed to have come into force on 31,12,2016. In this background, the action of the Assessing Officer CLT-A/NFAC in bringing to tax the deposit of cash into its bank account during de-monetization period as illegal tender is wholly unjustified.

14. The learned lower Authorities failed to appreciate that Section 5 of the Specified Bank Notes (Cessation of liabilities) Act. 2017 prohibited any person from knowingly or voluntarily holding, transferring or receiving the Specified Bank Notes from 31.12.2016 and. therefore, the crediting of the money in the bank account of the appellant before 31.12.2016 would not contravene the provisions of law.

15. The learned lower Authorities failed to appreciate that such specified bank notes could be accepted during the period 9,11.2016 to 31,12.2016 by a person in discharge of a debt and accordingly record it in its books account. which the appellant rightfully did.

16. The learned CIT-A/NFAC is not justified in upholding tax imposed under the provision of section 115BBE at the rate of 60% under the facts and in the circumstances of the appellant's case.

17. Without prejudice to the right to see waiver with Honble CCIT / DGIT the appellant denies liability to be charged interest U/s 234B & 234C of the Act under facts in the circumstances of the appellant's case.

18. 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 appellant may awarded caused the prosecuting the appeal and also order for the refund of the institution fees as part of the cost.”

2. Brief facts of the case are as under:

2.1 The assessee is registered with Reserve Bank of India as non-deposit accepting non-banking finance company-Micro Finance Institution (NBFC-MFI) that extends micro loans to poor women who do not have access to mainstream banking services. The micro enterprises created as a result of NMSPL loans enhances

not only the livelihoods of borrowers, but also the lives of their families. By creating an environment of financial inclusion for the poor, NMSPL envisions an India where access to income generating opportunities and ability to provide basic necessities for one's family is available to all.

2.2 It is submitted that the assessee during the year had 44 branches carrying on the business with an outstanding portfolio of Rs: 134.74 crores. The assessee filed return of income on 03/10/2017, declaring taxable income of Rs.165,35,660/- The Ld.AO issued notice dated 31/10/2019 wherein the assessee was asked to explain as to why the cash deposited in SBN during the year which is not to be treated as a legal tender not to be added u/s 68 of the Act. The assessee filed details called for during the course of assessment.

The Ld.AO after considering the submissions, added Rs. 2,96,85,500/- as unexplained money.

2.3 Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

2.4 Before the Ld.CIT(A), assessee filed 25 additional grounds on 15.09.2022. The Ld.CIT(A) noted that, all the additional 25 grounds relate to the same issue regarding addition of Rs.2,96,85,500/- as illegal tender during the demonetisation period deposited with the banks. It is submitted that the Ld.CIT(A) without considering the submissions of the assessee and the evidences filed, upheld the order of the Ld.AO.

2.5 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

3. Before this *Tribunal*, the Ld.AR submitted that no sufficient time was given by the Ld.AO and the Ld.CIT(A) did not consider the submissions filed by the assessee on 19.08.2019 and 18.09.2019. It is submitted that the assessee filed cash book revealing the receipt of cash from the borrowers. He thus prayed for the issue to be remanded to the authorities by placing reliance on the following decisions.

- *Anantpur Kalpana Vs ITO Koppal-ITA No 541/Bang/2021 dated 13-12-2021 is enclosed as Annexure-XV to the paper book.*
- *M/S Bhavana Co-Operative Credit Society Niyamitha VS ITO Sirsi-ITA No 739/Bang/2021 dated 16-09-2022 is enclosed as Annexure-XVI to the paper book.*
- *Shri Nralakere Marulasiddappa Dayananada VS ITO Chikmagalur-ITA NO 261/Bang/2023 dated 22-06-2023 is enclosed as Annexure-XVII to the paper book.*
- *Smt Malapur Maunika VS ITO Chitradurga-ITA No: 599/Bang /2023 dated 30-10-2023 is enclosed as Annexure XVIII to the paper book.*

4. On the contrary, the Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

5. Admittedly the assessee deposited Rs. 2,96,85,500/- during the post-demonetization period. Therefore Ld.AO made addition of said amount as income of the assessee u/s. 69A of the Act, on the ground that the assessee ought not to have accepted SBN's which were no longer a legal tender. In the present facts of the case, at the outset, we are of the view that the cash book and the confirmations from the depositors are to be filed by the assessee and should be verified by the Ld.AO.

6. We have carefully gone through the various standard operating procedures laid down by the central board of direct taxes issued from time to time in case of operation clean. The 1st of such instruction was issued on 21/02/2017 by instruction number 03/2017. The 2nd instruction was issued on 03/03/2017 instruction number 4/2017. The 3rd instruction was in the form of a circular dated 15/11/2017 in F.No. 225/363/2017-ITA.II and the last one dated 09/08/2019 in F.no.225/145/2019-ITA.II. These instructions gives a hint regarding what kind of investigation, enquiry, evidences that the assessing officer is required to take into consideration for the purpose of assessing such cases.

7. In one of such instructions dated 09/08/2019 speaks about the comparative analysis of cash deposits, cash sales, month wise cash sales and cash deposits. It also provides that whether in such cases the books of accounts have been rejected or not where substantial evidences of vide variation be found between these statistical analyses. Therefore, it is very important to note

that whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money.

8. Instruction 21/02/2017 issued by the CBDT suggests some indicators towards verifying the suspicion of backdating of cash. It also suggests indicators to identify abnormal jump in cash trials on identifiable persons as compared to earlier history in the previous year. Therefore in our opinion it is important to examine whether assessee falls into any of these categories and transfer of deposit of cash is not in line with history of transactions in the preceding assessment years.

9. The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions based on the facts in present case. We are aware of the fact that not every deposit during the demonetisation period would fall under category of unaccounted cash. However the burden is on the assessee to establish the genuineness of the deposit in order to fall outside the scope of unaccounted cash.

Assessee is directed to furnish PAN and address details of the depositors from whom loan repayment has been accepted in cash.

The Ld.AO shall verify all the details / evidences filed by the assessee based on the above direction and to consider the claim in accordance with law.

Needless to say that proper opportunity of being heard must be granted to the assessee. The assessee shall be granted physical hearing in order to justify its claim.

Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.

In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 31st January, 2024.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 31st January, 2024.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore