

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH,
BANGALORE**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**ITA No.59/Bang/2024
Assessment Year: 2017-18**

The Karnataka
Alpasankyatar Pattin
Sahakari Sangh Niyamit,
Keruru, Kerur.

v.

The Income Tax Officer,
Ward (1),
Bagalkot.

[**PAN:** AADAT 2962 J]
(Appellant)

(Respondent)

Appellant by : Shri Ramesh V. Mudhol, Ld.
ITP
Respondent by : Shri Ganesh R. Ghale,
Ld. Standing Counsel
Date of Hearing : 12.02.2024
Date of Pronouncement : 21.02.2024

ORDER

Per N.K. Choudhry (JM):

This appeal has been preferred by the Assessee against the order dated 28.11.2023 impugned herein passed by the National Faceless Appeal Centre/Learned Commissioner of Income Tax (Appeals) (in short "the Ld. Commissioner") u/s.250 of the Income Tax Act, 1961 (in short "the Act") for the AY 2017-18.

2. The only issue involved in the instant appeal relates to making of addition of Rs.24,45,198/- u/s.68 of the Act, by the Assessing Officer (in short "the AO") which has been affirmed by the Ld. Commissioner, against which, the Assessee is in appeal before us. We observe that as per the assessment order, the Assessee had deposited cash amounting to Rs.25,25,000/- in the form of Fixed Deposits during demonetization period. Therefore, the Assessee was show caused 'as to why' the cash deposits made during demonetization period is not treated as unexplained income specifically in view of the Central Government Notification No.2652 dated 08.11.2016, whereby, it was declared that Specified Bank Notes (in short "SBNs") of Rs.500/- & Rs.1000/- shall ceased to be legal tender w.e.f. 09.11.2016. In the said Notification, the option for exchanging the said notes was allowed up to and including 30.12.2016 by the person other than the banking company as referred to in Sub-Para No.1 of the Notification.

2.1 The Assessee before the AO, in response to show cause notice dated 10.12.2019, by filling its reply dated 12.12.2019, more or less claimed that the deposits made by the Assessee cannot be held as illegal in nature and even otherwise in this case the provisions Sec.68 of the Act, cannot be invoked, as the Assessee has provided the deposits details as the source of cash deposits.

2.2 The AO though considered the claim of the Assessee but did not get impressed and therefore, ultimately made the addition of Rs.24,45,198/- (Rs.25,25,000/- **minus** Rs.79,802/- as cash balance as on 08.11.2016).

3. The Assessee being aggrieved challenged the aforesaid addition before the Ld. Commissioner and made reliance on the judgment passed by the SMC Bench of ITAT at Bangalore in the case of Shri Bhagiratha Pattina Sahakara Sangha Niyamit v. ITO in ITA No.646/Bang/2021 vide order dated 18.02.2022, wherein, it was held that the acceptance of demonetization notes cannot be brought to tax u/s.68 of the Act. The Ld. Commissioner considering the claim and the judgment relied upon by the Assessee, distinguished the facts of the Assessee and dealt with by the Hon'ble Tribunal and observed *“that the Hon'ble ITAT has given the relief for the reason that the said Assessee accepted the demonetized notes only till 14.11.2016 when RBI through specific notification dated 14.11.2016 prohibited the Assessee from accepting the demonetized notes. So to say the said Assessee proved before the ITAT that the deposited demonetized notes were accepted only during the period from 08.11.2016 to 14.11.2016. Hence, the provisions of the RBI's Notification dated 14.11.2016 were not applicable to the facts of the said case.”* The Ld. Commissioner further observed that in the instant case, the Assessee has not given any such working that demonetized notes were tendered during the said period only. In absence of such details, the Assessee's case does not warrant such relief. Therefore, the

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addition made by the AO of Rs.24,45,198/- u/s.68 of the Act, is sustained.

4. The Assessee being aggrieved is in appeal before us and at the outset claimed that it has deposited the cash amount as alleged during the period i.e. from 08.11.2016 to 14.11.2016 and therefore, as per decision of the Hon'ble Tribunal in the aforesaid case in the case of Shri Bhagiratha Pattina Sahakara Sangha Niyamit v. ITO (supra) is entitled to get relief. On the contrary, the Id. DR refuted the claim of the Assessee.

5. We have given thoughtful consideration to the peculiar facts and circumstances of the case and observe that the Ld. Commissioner though considered the judgment as relied upon by the Assessee, however, mainly on the reason that the Assessee has not given any working details for depositing the notes during demonetization period from 08.11.2016 to 14.11.2016 and therefore, in the absence of such details, no such relief as claimed by the Assessee is warranted, however by considering the rival claim of the parties and the orders passed by the authorities below, we are of the considered view that for just decision of the case and for the ends of the justice, it would be appropriate to remand the issue to the file of the Ld. Commissioner for decision fresh, suffice to say by giving one more opportunity to the Assessee to substantiate its claim. The Assessee is consequently directed to file documents and working details for depositing the notes during demonetization period from 08.11.2016 to 14.11.2016 before the Ld. Commissioner.

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We clarify that primary onus to substantiate its claim would be on the Assessee and in case of failure to substantiate its claim, may be on proportionate basis, the addition in full or part would be upheld accordingly.

6. In the result, appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced on the 21st day of February, 2024, as Per Rule 34(5) of the Income Tax {Appellate Tribunal} Rule 1963.

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Bangalore,
Dated: 21st February, 2024.
TLN, Sr.PS (on Tour)

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore
5. Guard File

// True Copy //

By Order

Dy./Asst. Registrar, ITAT, Bangalore