

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **331/CHNY/2024**

निर्धारण वर्ष/Assessment Year: 2017-18

Thalappakatti Hotels Pvt. Ltd.,
Old No.18A, New No.17,
Flat No.B3, 11th Street,
Nandanam Extn.,
Chennai – 600 035.

**The Deputy Commissioner
of Income Tax,**
Vs. Corporate Circle 3(1),
Chennai.

PAN: AABCT 6066D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Ms.N.V. Lakshmi, Advocate
: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 12.03.2024
घोषणा की तारीख/Date of Pronouncement : 12.03.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1059343299(1) dated 03.01.2024. The assessment was framed by the DCIT, Corporate Circle 3(1), Chennai for the assessment year

2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.12.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in making addition of cash deposit during demonetization period amounting to Rs.4,49,09,000/- and applying the provisions of section 115BBE of the Act. The assessee in its grounds has raised the issues of deposit of Non-SBNs during demonetization period i.e., amounting to Rs.3,26,33,000/- and SBNs amounting to Rs.1,21,70,500/-. For this, assessee has raised various grounds which are factual and argumentative and hence, need not be reproduced.

3. Brief facts are that the assessee company is engaged in the business of running restaurants and rendered lodging services. The assessee's case was selected for scrutiny assessment for the reason that there were huge cash deposits made by assessee during demonetization period. The AO noted that the assessee has made cash deposit during demonetization period from 09.11.2016 to 30.12.2016 to the extent of Rs.4,84,10,341/-. The AO also noted that the auditor has certified in the annual accounts that there is closing cash balance of Rs.35,10,140/- as on 08.11.2016. This cash

balance includes specific bank notes (SBNs). The assessee filed details of cash deposit before AO during scrutiny assessment proceedings and shown that out of the total deposits, the SBN notes are to the extent of Rs.1,21,70,500/- and balance amount of Rs.3,26,33,000/- pertains to non-SBNs. The AO after allowing credit for opening cash balance of SBNs as on 08.11.2016 to the extent of Rs.35,10,140/-, which includes SBNs to the extent of Rs.35,01,000/- added to the balance cash deposit treating the same as undisclosed cash u/s.69 of the Act amounting to Rs.4,49,09,000/- and taxed the same u/s.115BBE of the Act for the reason that the claim of assessee is not backed by sufficient and appropriate evidence to report whether the disclosure made in the accounts are in accordance with the books of account maintained by the assessee company. Further, according to AO in the absence of any evidence to correctness of amount received in SBNs or non-SBNs cannot be verified at this stage. Hence, he added the balance entire amount of Rs.4,49,09,000/- as unexplained cash deposit u/s.69 of the Act and brought to tax u/s.115BBE of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) after considering the submissions of the assessee and going through the details, summary of SBNs and non-SBNs

deposited during demonetization period, information provided by banks, noted that the SBNs are to the extent of Rs.1,57,77,000/- and the regular currency deposited to the extent of Rs.3,26,33,341/- and thereby the total deposits are to the tune of Rs.4,84,10,341/-. This information is based on certificates issued by HDFC Bank and State Bank of India, which are reproduced in the CIT(A) order and are being reproduced again for the sake of clarity as under:-

S.No.	Name of Bank	A/c. No.	SBNs	Others	Total
1	HDFC Bank	50200015629975	6,00,500	21,44,185	27,44,685
2	HDFC Bank	50200013025881	24,35,000	1,17,55,280	1,41,90,280
3	HDFC Bank	50200013730847	22,26,000	29,64,438	51,90,438
4	HDFC Bank	50200013730850	20,92,000	25,70,348	46,62,348
5	HDFC Bank	50200013730860	16,69,000	20,56,267	37,25,267
6	HDFC Bank	50200013731191	58,57,000	1,03,43,329	1,62,00,329
7		5020022120410	-	3,86,141	3,86,141
8	State Bank of India	32255872815	8,97,500	4,13,353	13,10,853
			1,57,77,000	3,26,33,341	4,84,10,341

The CIT(A) after considering the submissions of the assessee and details of SBNs and non-SBNs noted that the story cooked up by the assessee is very naïve and the assessee converted its own unaccounted SBNs by replacing them with the new currency received from the customers and showing the SBNs as sales. The CIT(A) without any basis recorded this finding in para 6.2.5 as under and confirmed the action of the AO dismissing the ground:-

6.2.5. *The experience of every citizen in this country during demonetisation was that no non-exempted business entity accepted SBNs and in very rare cases of acceptance they demanded additional SBNs worth upto 20% more as a commission. The appellant is a very well established specialized food business entity and was fully aware of the laws and rules of the country and also fully aware of the risks involved in officially accepting the SBNs. The story cooked up by the appellant is very naïve. It is clearly evident that the appellant converted its own unaccounted SBNs by replacing them with the new currency received from the customers and showing the SBNs as sales. Income tax proceedings are not criminal proceedings and hence cannot be subject to the rigours of Evidence Act. Demanding evidence with regard to replacing of new currency (received out of sale proceeds) with the old SBNs is like asking the AO to prove the height of the Mt Everest to be 8849 meters. It is undisputed fact that the height of the Mt Everest is 8849 meters but a teacher cannot be asked to prove it Similar is the case of the AO in demonetisation cases. Letting go of the appellant on the violations committed by it/him without any tax implications will only be treated as a conscious act on the part of (quasi-judicial) appellate authorities to help him/it go scot-free. Any number of ledgers can be cooked up by the appellant but which cannot help the appellant's case. In appellant's response, it commented "The learned assessing officer ought to have appreciated that the prohibition to RECEIVE/ HOLD/ TRANSFER SBNs came into existence only through Specified Bank Notes (Cessation of Liabilities) Act, 2017 with effect from 31.12.2016 and not from 09.11.2016". The appellant misquotes the Act and tries to escape through this Act. The Act, Specified Bank Notes (Cessation of Liabilities) Act, 2017 is meant to deal with those citizens or business entities Who/which did/could not deposit the SBNs into bank account by 30th Dec 2016 but meant to deal with those Indian citizens who were outside India during demonetisation period and could not deposit due to reasons being away from India and certain class of persons as mentioned in Sec.4 of this Act. The appellant did not elaborate how this appellant fell into this class of persons as per this Act.*

6.3. *In view of the foregoing reasons, I am therefore in full agreement with the decision of the ld.AO and thereby I uphold the assessment order. Hence the grounds raised by the appellant on this issue are rejected and accordingly dismissed.*

Aggrieved, assessee came in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.counsel for the assessee stated that the assessee was having balance as on 08.11.2016 in SBNs amounting to Rs.35,01,000/- out of total cash balance of Rs.35,10,140/-. We treat this amount of Rs.35,01,000/- as explained because it is opening cash balance as on 08.11.2016. As regards to balance out of total SBNs deposited of Rs.1,57,77,000/-, Rs.1,22,76,000/- remains unexplained SBNs. The Id.counsel before us in regard to this, made submission that the SBNS deposited during demonetization period, apart from opening cash balance relates to assessee's operational receipts, as the assessee is engaged in restaurant and lodging business i.e., retail food industry and thousands of customers visit the outlets of the assessee on daily basis. The Id.counsel stated that making cash sales is a practice in the retail customer is inevitable in this industry. But, this is not backed by any evidence. As regards to balance of Rs.3,26,33,341/-, the Id.counsel for the assessee stated that the assessee's daily sales is more than the cash deposit made during demonetization which is reflected in the assessee's accounts. The assessee produced summary of chart showing sales and cash deposit

made during preceding two years to buttress his claim. The relevant data of November and December month reads as under:-

<i>Month</i>	<i>Sales</i>	<i>Cash deposits</i>	<i>% of cash deposits to sales</i>
<i>Nov-16</i>	<i>12,19,22,274</i>	<i>3,65,17,260</i>	<i>29.951%</i>
<i>Dec-16</i>	<i>13,30,40,501</i>	<i>3,32,97,537</i>	<i>25.028%</i>

Since the assessee is able to prove the cash sales, which is more than the cash deposit made during these two months i.e., November and December, we treat the cash deposit as explained, as the Id.Senior DR could not point out any defect in the same during the course of hearing when the same was confronted to him. Hence, this addition of Rs.3,26,33,341/- is deleted.

6. The only addition remains to be adjudicated is cash deposit of Rs.1,22,76,000/- as discussed above, the assessee claimed before us that this SBNs are deposited during demonetization period only out of operational receipts of assessee, out of assessee's retail sales of food items. Since this plea made by assessee and some evidences were filed before us, at this stage it is not possible for us to verify the same and hence limited to this amount of Rs.1,22,76,000/-, the matter is remitted back to the file of the AO. The AO will verify the SBNs deposited during demonetization period viz-a-viz the sales carried out by the assessee and after verification

the issue will be re-decided as per law. The appeal of the assessee is partly allowed for statistical purposes as indicated above.

7. In the result, the appeal filed by the assessee is partly-allowed for statistical purposes.

Order pronounced in the open court at the time of hearing on 12th March, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 12th March, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.