

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य  
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 517/Chd/2023  
निर्धारण वर्ष / Assessment Year : 2017-18

The ITO BC Bazar, Ambala Cantt, Haryana	बनाम	The Kesri Union Farmers Service Co- op Society Ltd. Ambala, Haryana
स्थायी लेखा सं. / PAN NO: AACAT0747L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Dhruv Goel, CA  
राजस्व की ओर से / Revenue by : Shri Dharam Vir, JCIT, Sr. DR  
सुनवाई की तारीख / Date of Hearing : 22/05/2024  
उदघोषणा की तारीख / Date of Pronouncement : 30/05/2024

**आदेश / Order**

**PER PARESH M. JOSHI, J.M. :**

This is an appeal filed by Revenue through Income Tax Officer, BC Bazar, Ambala Cantonment Ambala, Haryana. The Respondent Assessee is the Kesari Union Farmers Service Co-op Society Ltd. Ambala, Haryana.

2. The Revenue is aggrieved by the order of Ld. CIT(A) bearing DIN and Order No. ITBA/NFAC/s/250/2023-2024/1053940711(1) dt. 26/06/2023 in respect of A.Y. 2017-18. The relevant financial year 2016-17. Be it noted and appreciated that it is during this financial year demonetization of Indian Currency Notes of Rs. 500/- & Rs. 1000/- were **instructed** to be deposited back to the treasury by Government of India / Reserve Bank of India. The aim & objectives of demonetization were far too many, known to one and all. The core intention was to ensure that India Usher's into a New Dawn and in particular the Indian economy. It was an abrupt move on 08/11/2016 no doubt with utmost secrecy.

## Factual Matrix

3. The legal tender character of the specified bank notes hereinafter referred to as **SBNs** for sake of brevity was withdrawn in denominations of Rs. 500/- and Rs. 1000/- issued by RBI till November 08, 2016. Further as per section 3 of the specified bank notes (cessation of Liabilities Act, 2017), the old Notes of Rs. 500/- and Rs. 1000/- continued to have the guarantee of the RBI / Central Government till the appointed day. Under section 5 of the said Act no person shall receive, hold or transfer any old note after the appointed day. Such appointed day was defined as **30/12/2016** in section 2 of the same Act. Upon the combined reading of the aforesaid provisions:

(a) Old Notes of Rs. 500/- and Rs. 1000/- denominations continued to have guarantee of Central Government /RBI till **30/12/2016**

(b) Old notes could be received till **30/12/2016** by a person and could be exchanged against new notes till **30/12/2016**.

4. In this regard the relevant gazette notification no. 2652 dt. 08/11/2016 is important too because [ as per the Department of Income Tax] as per language of the notification itself SBNs could be exchanged at RBI or any branch of public sector banks, private sector banks, foreign bank, regional rural banks, urban cooperative banks and state cooperative banks for a period upto and including the 30<sup>th</sup> December 2016. In so far exchange was concerned the limit was Rs. 4000/- for SBNs(initially) but for deposit to be credited into account there was **no limit**.

5. In the present case the core contention of Department of Income tax is the respondent assessee is not a bank in strict sense which was authorized by law to exchange and / or deposit with them SBNs as assessee with character as that of a society were not listed in gazette notification 2652 dated 08/11/2016

which only and alone had listed banks as specified above. The assessee society does not fall in any category of banks as specified supra.

6. Department of Income Tax on the basis of data analytics and information gathered during the phase of online verification under “**Operation Clean Money**” gathered list of assessee who had deposited substantial cash in bank accounts during demotisation period [9<sup>th</sup> November 2016 to 30<sup>th</sup> December 2016] but had not filed the Income Tax return for AY 2017-18.

7. Therefore a Notice under section 142(1) was issued on **12/12/2017** calling upon the assessee respondent herein to prepare a true and correct return of income in respect of which the assessee is assessable under the Income Tax Act-1961 for the previous year relevant to assessment year 2017-18 on or before **11/01/2018** . It is required to be noted that the assessee had failed to file return under section 139 and so also failed to furnish ITR in response to notice issued u/s 142(1).

8. That notice under section 148 was issued on **01/08/2018** and thereafter notices under section 142 (1) of the Income Tax Act, 1961 alongwith Annexure were issued on **19/07/2019, 03/09/2019** and **05/10/2019**.

9. In response to above notices, society filed replies online through ITBA from time to time. The assessee society filed its Income Tax Return on **18.12.2019** declaring **NIL** income. It is also on record that further notice u/s 143(2) of the IT Act, 1961 was issued on 20.12.2019.

10. The assessee society has furnished a reply to the above notices wherein they have interalia contented as follows:

*1) That assessee is a banking cooperative society providing banking services to its members.*

2) that the society is collecting deposits from the members and is extending the credit facilities to the farmers.

3) That the society is having bank account with **Union Bank of India**.

4) That the assessee society had deposited Rs. **1,35,30,500/-** during the demonetization period.

5) that the whole of said **amounts belongs to members of the society who are account holders in the society**.

6) That the main objective of the society is to provide credit to small and marginal farmers, rural artisans, and agricultural labourers.

11. In brief, the assessee society has **accepted** the allegation of the Income Tax Department that they had deposited Rs. 1,35,30,500/- which was collected from **its members during demonetization** period and that after collection the said amounts was deposited into the account of assessee society which was maintained with union bank of India.

12. Since the assessee society was a society registered under local laws of Haryana state and was not **stricto sensu** a bank as is commercially and popularly known to public at large as specified aforesaid (supra) a show cause notice dt. **13.12.2019** also came to be issued to them calling upon them to show cause and explain as to why the aforesaid amount of Rs. 1,35,30,500/- should not be treated as unexplained cash credit since they were not authorized to accept SBNs after 08/11/2016 , in view of what is stated above by us.

13. We observed from records of the case that cash book, details of demonetized currency and cash deposit slips, society registration certificate, trading account, Profit & Loss account, Balance Sheet, Bank statement and bye laws of the society were furnished for A.Y 2017-18.

14. That the Department of Income Tax, Assessing Officer on careful perusal and examination of cash book found that assessee society had indeed

received SBNs from its members after the demonetization and that they later deposited these SBNs into their bank account with the Union Bank of India.

15. That the Ld. AO after examining and after conducting inquiry in his assessment order has observed as to why the explanation offered by the assessee society is not required to be considered by giving following reasons:

- i) The assessee society itself declared in its reply that it accepted SBNs from its members during the demonetization period.
- ii) The RBI had authorized commercial banks and cooperative banks to accept-SBNs (supra)

Reliance was placed on RBI Act-1934 and its relevant provision and so also notifications etc. The crux of not accepting the explanation was that assessee society ought not to have accepted the SBNs as they **had no authority in law**. The authority was only with RBI and its offices, any branch of Public Sector Banks, Private Sector Banks, Foreign Banks, Regional Rural Banks, Urban Cooperative Banks, State Cooperative Banks only and no other banking entity like assessee society held the authority at any point of time during the time of demonetization w.e.f 09/11/2016 to 30/12/2016.

16. AO was also of the considered view that SBNs were not allowed by RBI for normal business activities and was also not allowed to be stored for future usages. All persons were allowed to exchange and deposit SBNs in specified banks as per various notifications issued from time to time. During demonetization period old notes could be used for purchasing emergency services. AO has categorically held that " Thus it is clear that the assessee was not authorized to accept SBNs as Cooperative Societies were not allowed to accept –SBNs from 09/11/2016."

17. AO has further observed as under:

*Further, on basic principles of accountancy i.e. the money measurement concept underlines the fact that in accounting and economics generally, every event is recorded or transaction is measured in terms of money, i.e. the local currency monetary unit of measure, Since the SBNs were just pieces of papers and they bear no value on or after 9<sup>th</sup> Nov as the Central Government, the guarantor had withdrawn its guarantee so it cannot be measured in money terms hence it cannot be journalized in books, therefore the transaction made in SBN on or after 9<sup>th</sup> Nov, 2016 cannot be entered into cash book, while the assessee has credited SBN to its cash book. Since the assessee has accepted SBNs of Rs. 1,35,30,500/- during demonetization period and has deposited it in its bank account hence addition of Rs. 1,35,30,500/- is being made as unexplained cash credit u/s 68 of the Act. Accordingly, penalty proceedings under section 271AAC of the Income Tax Act, 1961 have been initiated separately.*

18. The AO in the assessment order has made addition of Rs. 1,35,30,500/- by invoking section 68 of the Income Tax Act, 1961 and has invoked 115BBE of the Act too by virtue of which assessee society is charged rate @ 60% i.e above normal rate of taxes plus.

19. Being aggrieved by the order of AO dt. 24/12/2019 under section 143(3) read with section 147 of the Income Tax Act, 1961, the assessee society the respondent herein preferred an first appeal before the Ld. CIT(A) who by DIN & Order No. ITBA/NFAC/S/250/2023-24 1053940711(1) dt. 26/06/2023 the impugned order herein has allowed the appeal of the assessee society in totality. The Department / Revenue is therefore is in second appeal under section 253 before us.

20. In the grounds of appeal the Revenue has contended as under and has raised the following grounds of appeal before us:

1. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the AO by treating the cash deposits of Rs. 1,35,00,000/- as unexplained cash credit u/s 68 r.w.s. 115BBE. The Reserve bank of India vide its gazette Notification No. 2652 dated 08.11.2016 has held that the specified bank notes held by a person other than a banking company referred to in subparagraph 1) of Paragraph 1 or Government Treasury may be exchanged at any issue office of the Reserve Bank or any branch of public section banks, foreign banks, Regional Rural Banks, Urban Co-op Banks and State Co-op Banks and may be deposited into any branch of public section banks, foreign banks, Regional Rural Bank, Urban Co-op Banks and State Co-op Banks for a period up*

to an including the 30.12.2016. However, the RBI has not allowed the Co-op Societies to exchange/deposit the SBNs. Moreover, the Co-Op Banks were also disallowed to exchange/deposit of SBN vide circular dated 14.11.2016.

2. On the facts and circumstances of the case, the Id. CIT(A) has erred on observing that similar issue where co-op societies had accepted old notes from members post demonetization, various tribunals have adjudicated in favour of assessee. Neither of the judgments taken up by the worthy CIT(A) in the appeal order is from the jurisdictional tribunal i.e. ITAT Chandigarh. It is prayed that the order of the Ld. CIT(A) be set-aside and that of the A.O. be restored. The appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed off.

### Record of Hearing

21. The physical mode hearing took place before us on 22/05/2024 when both the parties appeared before us. The Ld. DR strongly opposed the order of Ld. CIT(A) which was in favour of assessee society . He contended that CIT(A) in the peculiar facts and circumstances of the case ought not to have set aside the order of Ld. AO dated 24/12/2019 as the same is based on cogent ground. He contended that when admittedly the character of the assessee is of a society registered under local laws of Haryana and was not a bank within the category falling under RBI Notification No. 2652 dated 08/11/2016; they ought not to have accepted old denomination notes of Rs. 500/- and Rs. 1000/- respectfully. At the outset and threshold when they are just not allowed to touch the old notes of their Members; they went ahead without fear of law to deposit the same with them and **further ventured** to deposit huge amount of Rs. 1,35,30,500/- into their account with **Union Bank of India**. The Ld. DR during the course of hearing read out the extracts of Notification dated 08/11/2016 to buttress his arguments that assessee society ought not to have taken old notes at all. Therefore Ld. AO is fully justified in making **addition under section 68 r.w.s 115BBE of the Act** to the tune of Rs. 1,35,30,500/- and his order be upheld and order of Ld. CIT(A) be set aside. Reliance was placed on order of ITAT Chandigarh in ITA No. 535/Chd/2022 dt. 03/03/2023 in case of Mustafabad

Farmer's Service Co-operative Society Ltd. Vs. ITO Ward-5, Yamunanagar passed by one of us [ Per Vikram Singh Yadav, Hon'ble A.M].

Per contra the Ld. AR of the assessee society contended that order of Ld. CIT(A) is as per law and does not require any intervention by this Hon'ble Tribunal. He supported the order of Ld. CIT(A).

### **Findings & Conclusions**

22. After hearing both the parties and going through the records of the case we observe that all the evidences were produced by the assessee society during the course of assessment proceedings as well as before Ld. CIT(A) like bye laws of society, list of members from whom deposits were received, cash deposit slips, audited balance sheet and audit report, Bank statement, cash book. We find that sole ground on which AO has based his findings and conclusions under section 68 is that the assessee society could not accept the SBNs or old notes as they in law were not permitted to do so as per RBI and Government norms.

22.1 The AO has not found any discrepancy in the correctness of the explanation of the assessee society regarding nature and source of deposits, the AO was fully satisfied with submission of above documents and could not point out any discrepancy in the assessment order save except the very eligibility of the assessee society in accepting such old notes as per RBI norms.

22.2 Section 68 reads as under:

***"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the I[Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."***

22.3 We hold that assessee society has not only credited old notes in their books of account but has **offered a reasonable explanation** about the nature

and source thereof to the complete and full satisfaction of AO. It is for this reason there are no findings on merits on applicability of section 68 to the facts and circumstances of the case and therefore AO has gone by the very basis of RBI Policy / norms that assessee society was not an eligible entity to accept old notes at all. However this cannot be criteria within the plain and simple meaning of Section 68 which is clear and lucid (supra). The Ld. CIT(A) therefore has rightly set aside the order of Ld. AO by **deleting** complete addition r.w.s 115BBE. We hold that Ld. CIT(A) is correct in holding that assessee society has backed up its claim by furnishing the list of Members from whom deposit were received along with cash deposit slips, bank statements, audited Balance Sheet/ Audit Report and cash book copy. The Ld. AO has not doubted its correctness, authenticity or otherwise. Requirement of law u/s 68 are met and satisfied by the assessee society. Order of Ld. CIT(A) is legal and proper. Revenue has failed to point out any infraction of law or incorrect appreciation of evidence on part of Ld. CIT(A) in passing the impugned order.

22.4 The finding of AO *“Further, on basic principles of accountancy i.e. the money measurement concept underlines the fact that in accounting and economics generally, every event or transaction is measured in terms of money, i.e. the local currency monetary unit of measure, Since the SBNs were just pieces of papers and they bear no value on or after 9<sup>th</sup> Nov as the Central Government, the guarantor had withdrawn its guarantee so it cannot be measured in money terms hence it cannot be journalized in books, therefore the transaction made in SBN on or after 9<sup>th</sup> Nov, 2016 cannot be entered into cash book, while the assessee has credited SBN to its cash book. Since the assessee has accepted SBNs of Rs. 1,35,30,500/- during demonetization period and has deposited it in its bank account hence addition of Rs. 1,35,30,500/- is being made as unexplained cash credit u/s 68 of the Act. Accordingly, penalty proceedings under section 271AAC of the Income Tax Act, 1961 have been*

*initiated separately."* is rightly set aside by Ld. CIT(A). Be it further noted that the aforesaid amount was also accepted by **Union Bank of India**. We also do not subscribe to the rationale canvased by the Ld. AO as the facts and circumstances on account of demonetization were extra ordinary with no prior notice on or before **08/11/2016**. Under these firing circumstances the members of the assessee society having being pushed to wall had no other alternative left but to rush to the assessee society who came as their savior. It was a case of a reasonable belief on part of members of the assessee society too. We also subscribe the finding of Ld. CIT(A) and hold that such a finding under section 68 cannot stand on bare reading of it. In so far as order of Chandigarh Bench is concerned (supra) the facts of the case therein are materially different and matter is infact remanded to give one more chance of opportunity to explain.

22.5 We uphold the order of Ld. CIT(A).

**Order**

23. In the result appeal of Department / Revenue is dismissed.

Order pronounced in the open Court on 30/05/2024

Sd/-  
विक्रम सिंह यादव  
( VIKRAM SINGH YADAV )  
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-  
परेश म. जोशी  
( PARESH M. JOSHI )  
न्यायिक सदस्य / JUDICIAL MEMBER

**AG**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar