

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU “C” BENCH, BENGALURU**

**Before Shri Chandra Poojari, Accountant Member  
and  
Shri Keshav Dubey, Judicial Member**

<b>ITA No. 540/Bang/2024</b> (Assessment Year: 2017-18)		
Krishan Gas Agency No. B-6, GDA Shopping Complex MRCR Layout, Vijaya Nagar Bangalore 560040 PAN – AAFFK4416P  (Appellant)	vs.	ACIT, Circle - 3(2)(1) BMTC Building, 80 Feet Road 6th Block, Koramangala Bengaluru 560095  (Respondent)
Assessee by:	Smt. Suman Lunkar, CA	
Revenue by:	Shri V. Parithivel, JCIT	
Date of hearing:	07.05.2024	
Date of pronouncement:	12.06.2024	

**ORDER**

**Per: Keshav Dubey, J.M.**

This appeal at the instance of the assessee is directed against the order of the National Faceless Appeal Centre, Delhi ('learned CIT(A)') dated 29.01.2024 vide DIN & order No. ITBA/NFAC/S/250/2023-24/1060208638 (1) passed under Section 250 of the Income Tax Act, 1961 (the Act) for the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal: -

- “1. The learned Commissioner of Income-Tax (Appeals) has erred in partially confirming the order passed by the Assessing officer. The appellate order as passed to the extent confirming he assessment order is bad in law and are required to be quashed.*
- 2. Without prejudice, The learned CIT(A) has erred in partially confirming the addition made by the Assessing officer to the extent*

*of Rs. 1,53,50,711/-being cash deposited into bank account during demonetisation period as unexplained cash credit u/s 68 of the Act. On proper appreciation of facts and law applicable, the provisions of section 68 of the Act are not applicable to the fact of the case and in any case the entire cash deposits in bank being duly sourced and explained and there being no unexplained cash credit at all, the addition as confirmed being erroneous is to be deleted.*

3. *The authorities below have erred in not appreciating the fact that*
  - a) *the appellant being a Gas Agency, was authorized to collect specified Bank Notes for its business upto 15.12.2016 as per specific notifications issued by the Department of Economic Affairs, GOI*
  - b) *the cash deposited into bank are duly reflected in cash book and the source of such cash deposits are duly explained.*

*The addition as made/confirmed is contrary to facts and law applicable and based on surmises and conjectures is to be deleted.*

4. *In any case, the addition of cash deposits as made/confirmed being part of business receipts which have already been considered for computing taxable income, the addition on account of bank deposits as confirmed amounts to double addition and hence the same is to be deleted.*
5. *The learned CIT(A) has erred in confirming that the provisions of Section 115BBE of the I.T. Act, are applicable to the addition as made and confirmed. On proper appreciation of the facts of the law, it is clear that the provisions of Section 115BBE of the LT. Act, are not applicable to the case of the appellant and therefore the computation of tax under Section 115BBE of the I.T. Act, being erroneous is to be deleted.*
6. *The Appellant denies the liability to pay interest u/s 234B and 234C of the Act. The interest having been levied erroneously is to be deleted.*
7. *In view of the above and other grounds to be adduced at the time of hearing it is requested that the impugned orders be quashed or at least addition made by treating the cash deposits made as unexplained money u/s 68 of the Act be deleted, levy of tax at special rates be deleted and the interest levied be also deleted.”*

3. The brief facts of the case are that the assessee is a partnership firm running under the name and style of Krishan Gas Agency and carrying on the business of commercial and domestic cylinders & allied products. The

Assessee firm filed its return of income for the AY 2017-18 on 09.10.2017 declaring total income of Rs.14,36,860/-. Thereafter the case was selected for scrutiny under CASS to examine the issue such as large turnover shown in the ITR but audit report (Form 3 CD) not filed. During the course of assessment proceedings, as the assessee failed to submit any reply/evidence/document, the entire amount of cash deposited by the firm during the demonetization period amounting to Rs.1,68,50,711/- was added back to the returned income of the assessee as unexplained cash credit under Section 68 of the Act. As observed by the Id. Assessing Officer (AO) the said cash deposited amounting to Rs.1,68,50,711/- is also admitted by the assessee firm in its return of income for AY 2017-18. Aggrieved by the assessment order completed under Section 143(3) of the Act, the assessee preferred appeal before the learned CIT(A).

4. The learned CIT(A) partly allowed the appeal of the assessee on the ground that as per the notification dated 08.11.2016 (S.O. 3408(E)) the old notes could be accepted only between 09.11.2016 until 11.11.2016 for the gas dealers and accordingly the gas dealer was expected to accept demonetised currency notes only for three days i.e. from 09.11.2016 to 11.11.2016 and accordingly considering the total turnover of the assessee calculated the average per day turnover of Rs. 3,00,000/- and granted relief of Rs.15,00,000/- to the assessee for the aforesaid 3 days and the addition to the tune of Rs.1,53,50,711/- is sustained. Aggrieved by the order of the CIT(A) the assessee is in appeal before the Tribunal.

5. Before us the learned A.R. of the assessee submitted that the learned CIT(A) erred in partially confirming the addition made by the AO to the extent of Rs.1,53,50,711/- being cash deposited in to the bank account during demonetization period as unexplained cash credit under Section 68 of the Act. The entire cash deposited in the bank being duly sourced and explained and

there being no unexplained cash credit at all. Further the learned A.R. of the assessee vehemently submitted that the assessee being a gas agency was authorised to collect specific bank notes for its business up to 15.12.2016 as per the specific notification issued by the Government of India and as the cash deposited into the bank are duly reflected in the books of the firm and the source of such cash deposits are duly explained, the learned CIT(A) should have allowed the appeal of the assessee.

6. The learned D.R., on the other hand, supported the orders of the Income Tax Authorities below and submitted that the assessee failed to submit any reply before the AO and hence the authorities below have correctly treated the same as unexplained cash credit under Section 68 of the Act.

7. We have heard the rival contentions and perused the material on record. It is the submission of the learned A.R. that the assessee being a dealer in gas agency was authorised to collect specific bank notes for its business upto 15.12.2016, which was not verified by the AO in accordance with the CBDT circular wherein an instruction has been issued on 21.02.2017, 03.03.2017, 15.11.2017 and 09,08.2019. Further the learned A.R. submitted that as the verification of cash deposited is not in accordance with the directions of the CBDT, there is inadequate enquiry in respect of cash deposited during demonetization period. We are of the opinion that admittedly the assessee had accepted the SBNs which were no longer a legal tender and were to be explained in accordance with the relevant circular mentioned hereinabove.

These CBDT 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.

8. 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 wide 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.

9. The instruction dated 21/02/2017 that the assessing officer basic relevant information e.g. monthly sales summary, relevant stock register entries and bank statement to identify cases with preliminary suspicion of back dating of cash and is or fictitious sales. The instruction is also suggested some indicators for suspicion of back dating of cash else or fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year. It also suggests that, abnormal jump in percentage of cash trails to on identifiable persons as compared to earlier histories will also give some indication for suspicion. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases is also some indication for suspicion of fictitious sales. Transfer of deposit of cash to another account or entity, which is not in line with the earlier history. Therefore, it is

important to examine whether the case of the assessee falls into any of the above parameters are not.

10. The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions as the Assessee failed to submit any reply in response to the Show cause Notice during the Assessment Proceedings. 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.

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.

The reasonable opportunity of being heard must be granted to the assessee. Further the assessee may be granted physical hearing in order to justify its claim.

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

Order pronounced in the open Court on 12<sup>th</sup> June, 2024.

Sd/-  
**(Chandra Poojari)**  
**Accountant Member**

Sd/-  
**(Keshav Dubey)**  
**Judicial Member**

Bengaluru, Dated: 12<sup>th</sup> June, 2024  
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bengaluru*
5. *Guard File*

*By Order*

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*Assistant Registrar*  
*ITAT, Bengaluru*