

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.623/Bang/2024
Assessment year : 2017-18

M/s. Shree Vijayalaxmi Souharda Sahakari Niyamitha, 3, GP Centre, Yellapur Road, Near Court, Sirsi – 581 401. PAN : AAFAS 3155E	Vs.	The Income Tax Officer, Ward 1, Sirsi.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, Advocate
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	11.06.2024
Date of Pronouncement	:	24.06.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 06.03.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18.

2. The only issue involved in this appeal is addition of cash deposits made during the demonetisation period of Rs.18,36,509 which is treated as unexplained cash credits u/s. 68 r.w.s. 115BBE of the Act.

3. Briefly stated the facts of the case are that assessee filed return of income declaring NIL income after claiming deduction under Chapter VIA. The case was selected for scrutiny and statutory notices were issued to the assessee. During the assessment proceedings, the AO noted that during the demonetisation period the assessee accepted SBNs amounting to Rs.18,36,509 which are banned and cannot be considered as legal tender. Accordingly the entire amount of cash deposits into Vijaya Bank and Punjab of Rs.7,86,509 & Maharashtra Co-op. Bank Ltd. of Rs.10,50,000 totalling to Rs.18,36,509 were brought to tax u/s. 68 r.w.s. 115BBE of the Act.

4. On appeal, the First Appellate Authority (FAA) confirmed the order of the AO and dismissed this issue. Aggrieved, the assessee is in appeal before the ITAT.

5. The Id. AR reiterated submissions made before the lower authorities and submitted that cash deposits during the demonetisation period was accepted from the members and deposited in their accounts maintained with assessee. The AO has also accepted that the amount in SBNs of Rs.18,36,509 were received from members of the society. Therefore, addition made by the AO u/s. 68 is not maintainable.

6. The Id. DR relied on the order of lower authorities.

7. Considering the rival submissions, we note that the CIT(Appeals) has confirmed the addition made by the AO u/s. 68 towards cash deposits during the demonetisation period received from members.

We note from the assessment order that the AO has accepted that the amount has been received from members. However, we note that there is nothing coming from the records that KYC details were filed during the assessment proceedings as well as appellate proceedings. Therefore, we direct the assessee to file KYC details of the members of the society before the AO. A similar issue has been decided by the Tribunal in ITA No.1119/Bang/2023 in the case of Shree Jagadguru Mouneshwar Pattin Sahakari Niyamit vs ITO for the AY 2017-18 in which it has been held as under:-

"11. Considering the rival submissions, we noted that the assessee is a credit co-operative society dealing with members only. During the demonetisation period, the members of the assessee deposited cash in SBNs in their accounts maintained with the society. The assessee has produced the datewise cash receipts from members and KYC of the members. As per Notification of RBI and Govt. of India dated 08.11.2016 the assessee was not authorised to accept cash deposits in SBNs and the AO had made addition u/s. 68. We note that the assessee has filed details of cash deposits from members in their accounts with society along with KYC details and assessee has discharged the liability by providing details of members. Similar issue has been decided by the coordinate Bench of the Tribunal in the case of Sritherumalleshwara Co-op. Society in ITA No.187/Bang/2024 dated 27.3.2024 in which it has been held as under:-

" 6. Considering the rival submissions, we noted that the assessee is a co-operative society and accepted cash from members during the demonetization period which was deposited in Vijaya Bank, Hiriya Branch out of which Rs.14,32,000 has been added by AO u/s. 69A and taxed u/s. 115BBE of the Act. We note that during the course of assessment proceedings, the assessee did not file return of income after receiving notice as well as u/s. 139 or 142(1). The assessee had submitted details of cash depositors which is placed at page 1 of PB. It is clear from the details that the assessee has accepted cash from 43 members.

A similar issue has been decided by the coordinate Bench in ITA No.329/Bang/2023 for AY 2017-18 dated 24.08.2023 in which it has been held as under:-

“7. We have considered the rival submissions. The assessee is a credit co-operative society dealing with the members only. During the demonetisation period the members of the society have deposited cash in pygmie a/c, SB A/c, loan a/c. etc. The assessee has produced a list of depositors and the amount deposited by members with denominations of currency. The assessee has accepted the deposits from its members from 9.11.2016 to 14.11.2016. As per Gazette Notification of RBI & Govt. of India dated 08.11.2016, the assessee was not authorized to accept cash deposits in SBNs. The AO observed that the assessee was not authorized to receive or collect money in SBNs of Rs.1,000 and Rs.500 which were not in legal tender w.e.f. 09.11.2016 and such transactions on or after 09.11.2016 cannot be entered in cash book. The cash deposits made by the members of the society had no value as such. The Assessing Officer issued show-cause notice by observing that the impugned amount should be treated as income of the assessee u/s 69A of the Act., however the AO made addition u/s 68 of the I.T. Act. The assessee has satisfied the requirement of section 69A of the Act and the AO did not give further opportunity to the assessee for addition u/s 68 of the I. T. Act. During the assessment proceedings, assessee filed the details of list of depositors and loanees who made cash deposits. The AO accepted that it was money deposited by the members and noted that the assessee had brought the entries in its books of account, therefore section 68 will apply and accordingly treated it as income u/s. 68. There is no doubt that the assessee has satisfied the identity of the deposits, who are members of the society and genuineness of the transactions because the amounts have been deposited in the members accounts only. If the AO had any doubts that the assessee has not satisfied the ingredients of section 68, he could have asked further details from the assessee, but the AO has not done the same, which clearly shows that the assessee has discharged its duty to satisfy the requirement of section 68. We further note that the SBNs have been deposited in the members accounts, accordingly, the assessee did not get any extra benefit as observed by the AO in his order at para No. 06 which was

treated as income u/s 69A of the Act. In view of this, the provisions of section 68 is not applicable in the present facts of the case and the AO without discussing in detail has made addition u/s. 68 which is not proper. Therefore the addition is deleted.”

7. The details submitted by the assessee was not doubted by the AO. Since in this case the ld. DR submitted that this requires verification, we remit this issue to the AO for verification of the details of cash deposits submitted by the assessee and decide as per law following the above coordinate Bench decision in ITA No.969/Bang/2023 (supra). The assessee is directed to furnish all the details and substantiate its case without seeking any unnecessary adjournment for early disposal of the case.”

12. Following the above decision, we remit this issue in the above terms to the AO.”

8. Respectfully following the above judgement, we remit this issue to the Assessing Officer for fresh consideration and decision as per law in the light of the above judgment.

9. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 24th day of June, 2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 24th June, 2024.

/Desai S Murthy/

+Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.