आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 776/Chny/2024**

निर्धारण वर्ष / Assessment Year: 2017-18

Ganapathy Chandrasekaran, 93, Erode Main Road, Ganapathypalayam, Erode – 638 153. **[PAN: ABRPC-3073-D]**	v.	Deputy Commissioner of Income Tax, Circle -1, Erode.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. S. Sridhar, Advocate (Erode)
प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 20.06.2024
घोषणा की तारीख/Date of Pronouncement : 28.06.2024

आदेश /O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2017-18, vide order dated 30.01.2024.

2. The main grievance of the assessee is against the action of the ld.CIT(A) confirming the addition of Rs.32,00,848/- u/s. 69A of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3. The brief facts are that the assessee is an individual, who filed his return of income for the assessment year 2017-18 on 01.12.2017, declaring total income of Rs.28,66,040/-. The Assessing Officer noted that the assessee has declared income from profit and gains from business, income from house property and income from capital gains. Later, the case was selected for scrutiny for the reason that there was cash deposits during the year. The Assessing Officer issued statutory notices to the assessee calling for the source for cash deposits in his bank accounts. The assessee brought to the notice of the Assessing Officer that assessee was in the business of Rice Mill and sales of rice in local Shandyin, Erode and near by districts mostly for cash and in such circumstances small time traders purchases rice from assessee in cash only and that the assessee has deposited the sales in his bank account which was used for purchase of paddy. The Assessing Officer noted from perusal of the cash book that as on 08.11.2016 assessee had cash on hand to the tune of Rs.13,02,652/- and after 08.11.2016 assessee has deposited Rs.32,00,848/-. Thus, the Assessing Officer noted that the assessee has deposited total cash of Rs.45,03,500/- in SBNs. But, since assessee has shown cash on hand as on 08.11.2016 to the tune of Rs.13,02,652/- the balance amount has been added u/s . 69A of the Act i.e., Rs.32,00,848/-.

Aggrieved, the assessee preferred an appeal before the ld.CIT(A) and brought to his notice that the assessee had filed the financials including the books, which has been accepted by the Assessing Officer; and the Assessing Officer out of the total SBNs deposited to the tune of Rs.45,03,500/- has accepted an amount of Rs.13,02,652/-, which shows that the Assessing Officer has accepted the cash receipt are from trading of rice. According to the assessee, when the source of SBNs to the tune of Rs.13,02,652/- has been accepted by AO as a trading receipt, he cannot hold that the amount of Rs.32,00,848/- as undisclosed/ unexplained money u/s. 69A of the Act, unless he has material in his possession to show that assessee had undisclosed source of income, which is not the case of Assessing Officer in the present case. Therefore, according to the assessee, section 69A of the Act is not attracted in his case, because assessee has recorded the amount in question in his books of accounts, which shows that source of income is trade receipt; and the assessee has demonstrated with evidence before the Assessing Officer the nature and source of the amount in question and therefore, the Assessing Officer could not have made the addition u/s. 69A of the Act. However, according to the ld.AR the ld.CIT(A) without assigning any other reasons has confirmed the

action of the Assessing Officer which is erroneous. Aggrieved, the assessee is before us.

4. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts aforesaid are not repeated for the sake of brevity. We have noted that assessee had deposited SBNs to the tune of Rs.45,03,500/- out of which Assessing Officer has accepted the nature and source of Rs.13,02,652/- and has added Rs.32,00,848/- u/s. 69A of the Act as unexplained money. The assessee has filed the books of accounts and other details called for the during the assessment proceedings and the Assessing Officer has not found any infirmity in the books of the assessee and accepted the return of income filed by the assessee except a part of the SBN cash deposits, which assessee asserts to be trade receipt from rice mill/rice sales in Shandyin. On appeal, the ld.CIT(A) has upheld the action of the Assessing Officer, which we cannot countenance, since we find that there was no material in the possession of Assessing Officer to rebut the evidence discharged by the assessee that the SBN's amounting to Rs.32,00,848/- was from trading of rice. Unless the Assessing Officer has some material to show that assessee had any other

source of income, it is not correct to presume that Rs.32,00,848/- was undisclosed income. Therefore, Assessing Officer's action of having accepted Rs.13,02,652/- as trade receipts, his action of not accepting the source of the SBN deposited to the tune of Rs.32,00,848/- cannot be sustained. The ld.AR also cited the decision of this tribunal in the case of Mrs. Umamaheshwari vs ITO in ITA No: 527/Chny/2022 dated 14.10.2022 and M/s. Mickey Fireworks Industries vs ACIT in ITA No: 264/Chny/2023 dated 26.07.2023, wherein similar addition was made for SBN deposits after 08.11.2016, wherein the Tribunal took note of the Specified Bank Notes (Cessation of Liability), Act 2016 and deleted addition u/s. 69A of the Act made in that case by holding as under:

> *3. The brief facts of the case are that the assessee is an individual filed her return of income for the AY 2017-18 on 07.03.2018 declaring total income of Rs.4,37,090/- and agricultural income of Rs.7,83,000/-. The case has been selected for limited scrutiny to verify cash deposits during demonetization period. During the course of assessment proceedings, the AO gathered information u/s.133(6) of the Act, regarding cash deposits from Karur Vysya Bank, Kuniamuthur Branch, Coimbatore, and KVB Main Branch, Coimbatore. As per the information submitted by the Bank, the assessee has deposited a sum of Rs.17,25,500/- in Specified Bank Notes of the denomination of Rs.500/- & Rs.1,000/- on various dates. The Assessing Officer called upon the assessee to explain source for cash deposits, for which, the assessee has filed a cash book,*

as per which, cash balance available as on 08.11.2016 is only Rs.9,58,066/- and for the balance amount, the assessee explained source for cash deposits out of sale proceeds received from one Smt.Vedhavathy amounting to Rs.13 lakhs on 09.11.2016 for sale of property. The AO accepted source for cash deposits to the extent of Rs.9,58,066/- out of cash balance available as on 08.11.2016. However, for balance amount of Rs.7,67,500/-, the AO rejected explanation of the assessee regarding source for cash deposits from 08.11.2016 on the ground that the assessee cannot accept the demonetized currency and thus, opined that the assessee has not proved source for cash deposits to the tune of Rs.7,67,500/- and thus, made addition u/s.69 of the Act. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeeded. The Ld.CIT(A), NFAC for the reasons stated in their appellate order, confirmed the additions made by the AO. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before me.

4. The Ld.AR for the assessee submitted that the Ld.CIT(A), NFAC erred in confirming additions made towards cash deposits of Rs.7,67,500/- by treating it as unexplained money u/s.69 of the Act, without appreciating the fact that the assessee can transact in Specified Bank Notes up to appointed date as per the Specified Bank Notes (Cessation of Liabilities) Act, 2017, and as per said Act, appointed date for this purpose is 31.12.2016. In this regard, he relied upon the decision of ITAT Visakhapatnam Bench in the case of ITO v. Sri Tatiparti Satyanarayana in ITA No.76/Viz/2021 order dated 16.03.2022.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), field a detailed Written Submissions dated 21.09.2022 and argued that as per the Specified Bank Notes (Cessation of Liabilities) Act, 2017, which came into effect from 31.12.2016, the assessee is prohibited from dealing with Specified Bank Notes w.e.f.09.11.2016 for all purposes except

for the purpose of exchange of such Specified Bank Notes held on or before 08.11.2016. Further, assuming for a moment, the assessee can transact in Specified Bank Notes up to 31.12.2016, but the assessee could not prove the receipt of sale consideration of Rs.13 lakhs in Specified Bank Notes and thus, the benefit of source cannot be given to the assessee. The relevant Written Submissions filed by the Ld.DR is reproduced as under:

> *The counsel of the assessee argued that, section 5 of The Specified Bank Notes (Cessation of Liabilities) Act, 2017 (hereinafter called the 'Act') permits persons to hold, transfer or receive Specified Notes up to the 'appointed date and section 2(a) of the Act, defines 'appointed date' as the 31st December, 2016. Hence, according to him, the amount of specified notes received by the assessee on 9th November, 2016 is a valid note and the transaction is also valid as it is not barred by any law in force.*
>
> *The argument is contrary to the other provisions of The Specified Bank Notes (Cessation of Liabilities) Act, 2017 for the following reasons.*
>
> *a. The Specified Bank Notes (Cessation of Liabilities) Act, 2017 came into being from 31st December, 2016 (section 1(2) of the Act)*
>
> *b. Section 13 of the Act clearly states the provisions of Specified Bank Notes (Cessation of Liabilities) ordinance, 2016 will prevail till enactment of this Act.*
>
> *c. As per the Para of the Ordinance (copy enclosed), the Specified notes ceases to be legal tender with effect from 9th November, 2016 for all purpose except for the purpose of exchange of such specified notes held on or before 8th November, 2016 as specified u/s section 4 of the Ordinance.*

d. In the present case, the assessee has claimed to have obtained Rs.13,00,000/- on 9th November, 2016 as sale consideration in specified notes. Since as per the Ordinance, the specified notes ceases to be legal tender for all transaction other than for the purpose of exchange of the same under section 4 of the Ordinance and the assessee being not one of the notified persons permitted to receive the specified notes, the amount so claimed to have been received is not legally recognizable as a legally acceptable source. Further most importantly, the assessee has not proved with documentary evidence that the consideration received of Rs.13,00,000/- comprised of 'Specified notes' in full. The assessee is just attempting to telescope the so stated receipt as an explanation of source for its accumulated Specified notes in procession as on the midnight of 8th November, 2016 and exchanged with the banking authorities on 10th November, 2016. Even if the assessee produces such specific evidence of having received the full consideration in only specified notes, the benefit of violation of provisions of Ordinance cannot be extended under the Income Tax Act in line with the principle as laid out in the explanation to u/s 37 of the Income Tax Act-1961.

6. I have heard both the parties, perused the materials available on record and gone through orders of the authorities below. As regards, the first objection of the AO on legal tender of Specified Bank Notes on or after 08.11.2016, I find that as per the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016, which came into effect from 31.12.2016 appointed date for this purpose means 31.12.2016. Further, as per Sec.5 of said Ordinance, from the appointed date, no person shall, knowingly or voluntarily, hold or transfer or receive any Specified Bank Notes. From the above what is clear is that up to the appointed date i.e.31.12.2016, there is no prohibition for dealing with

Specified Bank Notes. Therefore, in my considered view, the objection of the AO on this regard in light of said Act is devoid of merits. Further, a similar issue had been considered by the Tribunal, Visakhapatnam Bench, in the case of Sri Tatiparti Satyanarayana in ITA No.76/Viz/2021, where the Tribunal after considering relevant provision of Specified Bank Notes (Cessation of Liabilities) Act, 2017, held that there is no prohibition under the Act to deal with Specified Bank Notes up to 31.12.2016. Therefore, in my considered view, the observation of the AO on this regard totally incorrect and liable to be rejected.

7. Having said so, let us come back to explanation of the assessee with regard to source for cash deposits. The assessee explained before the Assessing Officer that she had received a sum of Rs.13 lakhs from Smt.Vedhavathy for sale of property on 09.11.2016. In fact, the AO accepted, the assessee has received consideration for sale of property from Smt.Vedhavathy and the purchaser has also filed a confirmation letter stating that she had paid consideration in cash. Therefore, once the AO is accepted the fact that the assessee has received consideration in cash, then the source for cash deposits during demonetization period should have been accepted out of sale consideration received for property. In my considered view, the Assessing Officer grossly erred in not accepting the source for balance cash deposits of Rs.7,67,500/-, even though, the assessee has filed necessary evidences to prove the availability of source for cash deposits. The Ld.CIT(A) without appreciating the fact simply confirmed the additions made by the AO. Hence, I set aside the order of the Ld.CIT(A) and direct the AO to delete the addition made towards cash deposits of Rs.7,67,500/- u/s.69A of the Act.

8. In the result, appeal filed by the assessee is allowed."

5. Similarly, the assessee brought to our notice the decision of Hon'ble Tribunal of Bangalore in the case of Smt. Malapur Mounika vs ITO in ITA No. 599/Bang/2023 dated 30.10.2023, wherein a similar action of the Assessing Officer has been deleted by the Tribunal by holding as under:

> *"7. I have heard the rival submissions and perused the material on record. During the demonetization period, a sum of Rs.25,41,000/- was deposited in SBN in the bank account of the asses see. The asses see had explained the said source of cash deposit of Rs.8,13,384/- as made out of the closing cash balance as per books of account on 08.11.2016, which has been accepted by the AO. The balance Sun} of Rs.17,28,000/- was explained by the assessee to be from out of amounts realized from debtors vide her reply dated 29.07.2018. The AO held that the assessee has violated the notification No.S.O.3408(E) dated 08.11.2016 issued by the RBI wherein the legal tender character of old bank notes in the denomination of Rs.500 and Rs. 1000 was withdrawn w.e.f. 08.11.2016 and assessee was not authorized by the Government of India to collect the SBNs. Therefore it was concluded by the AO that a sum of Rs.17,28,000/- is to be added under section 69A of the Act. The CIT(A) dismissed the appeal of the assessee also for the same reason by holding that assessee was not allowed to accept the SBNs.*
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> *8. The RBI had permitted the assessee to deposit SBN into the bank account on or before 'appointed date'. The banks were asked to accept the same before the 'appointed date'. The SBNs (Cessation of Liabilities Act, 2017) defines appointed day' vide section 2(1)(a) of the Act. "Appointed Day" means 3 I" day of December, 2016. Section 5 of the SBNs Cessation of Liabilities Act, 2017 also deals with prohibition of holding, transferring or receiving SBNs. Section 5 states as under:*
>
> > *"5. On and from the appointed day, no person shall, knowingly or voluntarily, hold, transfer or receive any specified bank note:*
> >
> > *Provided that nothing contained in this section shall prohibit the holding of specified bank notes-*
> >
> > *(a) by any person-*

(i) up to the expiry of the grace period; or (ii) after the expiry of the grace period,-

(A) not more than ten notes in total, irrespective of the denomination; or (B) not more than twenty-five notes for the purposes of study, research or numismatics;

(b) by the Reserve Bank or its agencies, or any other person authorised by the Reserve Bank;

(c) by any person on the direction of a court in relation to any case pending in the court."

9. Therefore, the bar on holding and transferring or receiving SBNs is only after the 'appointed day' which is 31.12.2016. In view of the above, there is no violation by the assessee of any law in accepting SBNs for the purpose of cash sales and considering it to be a due discharge of debt. Furthermore, even the CBDT had issued various Standard Operating Procedures (SOPs) instructing the AOs on the nature of verification to be made in cases where cash has been deposited in SBNs. The following instructions have been issued:

[a] Instruction No. 03/2017 dated 21/02/2017

[b] Instruction No. 04/2017 dated 03/03/2017

[c] Circular in F No. 225/363/2017-ITA.II dated 15/11/2017;

[d] Circular in F No. 225/145/2019-ITA.II dated 09,/08/2019

10. On perusal of Circular F.No.225/145/2017-ITA 11 dated 09.08.2019 (enclosed as Annexure- 6 to the written submission), it is evident that AO has to examine the cash deposits made during the demonetization period in the case of businesses in accordance with the SOP laid down in the aforesaid circular. Only in cases where the assessee is unable to explain the source of the cash deposits made, can the said sum be treated as unexplained. In the instant case, it was claimed by the assessee that the entire sales made by her are recorded in the books of accounts and offered to tax. The sole reason for both AO and CIT(A) for making/ sustaining the addition under section 69A of the Act was that subsequent to 08.11.2016, the SBNs were not legal tender and assessee was not person authorized to collect SBNs. The AO and the CIT(A) has not examined the veracity of source of cash deposits.

11. The Bangalore Bench of the Tribunal in the case of Anantpur Kalpana in ITA No.541/Bang/2021 held that accepting SBNs subsequent to 08.11.2016 cannot be sole reason for making

addition under section 69A of the Act. The relevant arguments raised before the Bangalore Bench of the Tribunal and the findings read as follows:

"4. Aggrieved by the aforesaid addition, assessee preferred appeal before the CIT(A) and submitted that the cash deposits of Rs. 4,50,500/in question was the cash collection from the small and medium class traders collected on various dates out of the business of the Assessee which were deposited in the bank account of the Assessee between 10/11/2016 and 19/12/2016 in CBS Bank and Axis Bank. Since the deposit of Rs. 4,50,500/- in her bank account are from the sale proceeds from distribution of FMCG goods relating to her business concern 'M/s. Mahalakshmi Enterprise' from small and medium class traders collected on various dates in discharge of their liability in 1000 rupee and 500 rupee notes. It was submitted that old demonetized notes could be accepted till 30-12-2016 and a payee can continue to accept old demonetized notes of Rs 500 or Rs 1000 since those notes can be accepted as valid tender and there is no prohibition or lawful direction not to pay or accept old notes. The old notes still continue to be convertible into money since any person who is validly in possession of the old notes can get them converted into legal tender from banks or can tender it for payment to specified transactions. There are no rules forbidding the payments in old notes. Therefore it is not correct to say that the old notes do not carry any value. It was submitted that the Assessee's nature of business involves dealing with small and medium class traders and is predominantly cash oriented. The Assessee is maintaining regular books of accounts and the said books are subject to compulsory audit under the provisions of section 444B of the Act. The Assessee is also filing its VAT Returns in connection to the purchases and sales made by it to the concerned authority. It was submitted that the impugned addition made is nothing but the sales made by the Assessee. The Assessee relied on decision of JTAT Indore Bench in the case of DEWAS SOYA LTD, UJJAIN vis Income Tax (Appeal No 336/Jnd/2012 wherein on identical facts of the case it was held that the claim of the assessee that such addition resulted into double taxation of the same income in the same year because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts received from above parties has also been added u/s. 68 of the Act.

5. The CIT(A) however did not accept the contention of the asses see. He held that once the Rs.500 and Rs.1000 notes are declared as not valid legal tender on 09.11.2016, the assessee cannot accept cash payments after 09.11.2016 that are demonetized and doing so was patently illegal. The CJT(A) therefore held that the plea of the asessee cannot be accepted and accordingly dismissed the appeal of the assessee. Aggrieved by the order of the CJT(A), the assessee is in appeal before the Tribunal.

6. I have heard the rival submissions. Learned Counsel for the assessee submitted that both the AO and CJT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. He submitted that the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It was also submitted that the assessee was having only one source of income from beedi, tea power and pan masala and therefore provisions of section I I 5BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. It was also submitted that the government permitted all to deposit old demonetized notes upto 31.12.2016. Since the amounts deposited were sale proceeds of business and the income from the business have already been taxed, the impugned addition should be deleted. Our attention was also drawn to section 26(2) of the RBI Act, 1934 which provides that government can specify certain notes as not legal tender. It was argued that if there is any violation of the statutory provisions, the consequences will be only under the relevant provisions of RBI Act, 1934 and those violations cannot lead to any addition under section 68 of the Act. The learned Counsel also placed reliance on the following judicial pronouncements rendered on identical facts of the case as that of the assessee. Hon 'ble Kolkata Tribunal in the case of CIT Vs. Associated Transport Pvt. Ltd. reported in 84 Taxman I 46 wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, therefore, held that there was no reason to treat this amount as income from undisclosed sources and it was not a fit case for treating the said amount as concealed income of the asses see. The revenue moved to Hon'ble Calcutta High Court against the

order of the Hon'ble Tribunal and the Hon'ble High Court has confirmed the order of the Tribunal while deleting the penalty; the Hon'ble High Court of Calcutta held as under:

> *"8. The Tribunal was of the view that the assessee had sufficient cash in hand. In the books of account of the assessee, cash balance was usually more than Rs.81,000/-. There is no reason to treat this amount as income from undisclosed sources. It is not a fit case for treating the amount of Rs.81,000/- as concealed income of the assessee and consequently imposition of penalty was also not justified in this case."*

7. Further reliance is placed on the decision of the Hon'ble Vishakapatnam Tribunal in the case of ACIT Vs. Hirapanna Jewelers im [TA No. 253/Viz/2020 wherein, the Hon'ble Tribunal while considering the issue of implication of Sec. 68 of the Act during demonetization held as under:

> *9. In view of the foregoing discussion and taking into consideration of all the facts and the circumstances of the case, we have no hesitation to hold that the cash receipts represent the sales which the assessee h&S rightly offered for taxation. We have gone through the trading account and find that there was sufficient stock to effect the sales and we do not find any defect in the stock as well as the sales. Since, the assessee has already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. This view is also supported by the decision of Hon'ble Delhi High Court in the case of Kailash Jewellery House (Supra) and the Hon'ble Gujarat High Court in the case of Vishal Exports Overseas Ltd. (supra), Hence, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.*
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> *10. The assessee filed cross objections supporting the order of the Id. CIT(A). Since, the appeal of the revenue is dismissed, the cross objection filed by the assessee becomes infructuous, hence, dismissed.*
>
> *11. In the result, appeal of the revenue as well as the cross objection of the assessee are dismissed."*

8. Learned DR reiterated the stand of the Revenue as reflected in the order of the CIT(A).

9. I have carefully considered the rival submissions. Both the AO and CIT(A) accepted the fact that the cash receipts are nothing but sale proceeds in the business of the assessee. The addition has been made only on the basis that after demonetization, the demonetized notes could not have been accepted as valid tender. Since the sale proceeds for which cash was received from the customers was already admitted as income and if the cash deposits are added under section 68 of the Act that will amount to double taxation once as sales and again as unexplained cash credit which is against the principles of taxation. It is also on record that the assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of the Act will have no application so as to treat the income of the assessee as income from other sources. Hon'ble Kolkata Tribunal in the case of CIT Vs. Associated Transport Pvt. Ltd. reported in 84 Taxman 146 on identical facts took the view that when cash sales are admitted and income from sales are declared as income, wherein the Hon'ble Tribunal found that the assessee had sufficient cash in hand in the books of account of the assessee, that there was no reason to treat the cash deposits as income from undisclosed sources. The Hon 'ble Vishakapatnam Tribunal in the case of ACIT Vs. Hirapanna Jewelers in ITA No. 253/Viz/2020 on identical facts held that when cash receipts represent the sales which the assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in the books of account, it was held that when Assessee already admitted the sales as revenue receipt, there is no case for making the addition u/s 68 or tax the same u/s 115BBE again. I am of the view that in the light of the facts and circumstances of the present case, the addition made is not sustainable and the same is directed to be deleted."

12. The Chennai Bench of the Tribunal in the case of Mis. Purani Hospital Supplies Pvt. Ltd., in ITA No.489/Chny/2022 had also taken a similar view. The relevant finding of the Chennai Bench of the Tribunal reads as follows:

> *"8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts borne out from records indicates that the assessee is in the business of distribution of pharmaceutical goods, surgical and diagnostics goods, which is considered to be essential goods. The assessee has deposited a sum of Rs. 1,82,37,000/- during demonetization period in specified bank notes to various bank accounts. The assessee claims that source for cash deposit is out*

of realization of cash sales made before demonetization period. The assessee has filed necessary details including copies of sales bills made in cash before demonetization period and also list of parties from whom cash collected after demonetization period and deposited into bank account. The assessee had also filed necessary details of information furnished to department immediately after demonetization period towards cash collected from third party in response data. The Assessing Officer is not disputing all these claims of the assessee including evidence filed in support of justification for source for cash deposit. But, the Assessing Officer has made additions towards cash deposit in specified bank notes after demonetization period only for the reason that the assessee is not eligible to transact or receive any specified bank notes after demonetization as per notification/GO issued by RBI and Government of India. The Assessing Officer, had discussed the issue with reference to GO issued by RBI and Government of India and concluded that since the assessee has accepted demonetized currency in violation of circular/notification issued by the Government of India, the source explained by the assessee cannot be accepted. In other words, the Assessing Officer never disputed fact that the assessee has made sales in cash before demonetization period and also realized cash from debtors against cash sales made before demonetization period. Therefore, to decide the issue whether the assessee can accept specified bank notes even after it was banned for legal tender after 09th November, 2016 and further, the same can be added uls. 69 of the Act as unexplained investment and also can be taxed u/s. I 15BBE of the Act, it is necessary to examine the case in light of business model of the assessee, and evidence filed during the course of assessment proceedings.

9. The provisions of section 69 of the Act, deals with unexplained investment, where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of accounts, if any, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by the assessee is not in the opinion of the Assessing Officer, satisfactory, then the value of the investments may be deemed to be the income of the assessee of such financial year. In order to invoke provisions of section 69 of the Act, two conditions must be satisfied. First and foremost condition is there should be an investment and second condition is the assessee could not explain source for said investment. In this case, if you go through evidence filed by

the assessee including comparative details of amount collected out of sales for financial year 2015-16 & 2016-17 and details of cash deposit into bank for above financial years, we find that there is no abnormal deviations from its normal course of business. Further, on verification of analysis of cash sales and cash deposits to bank account there is no deviation of cash sales and cash deposits when compared to earlier financial year and demonetization period. Further, the assessee is dealing in essential commodities like medicines, surgical and diagnostics equipment through medical shops, hospital, doctors etc. The agents of the assessee come and collect cash from parties and directly deposit to bank account of the assessee. It is also not in dispute, in this line of business the majority of sales is in cash, because doctors, hospitals and medical shops mainly deals with cash. Therefore, from the business model of the assessee and trade practice there is no doubt of what so ever with regard to the explanation offered by the assessee that it has collected cash from debtors towards sales made in cash before demonetization period. Further, the appellant has also regularly availing GSTIVAT returns and there is also being no change or deviation in the VAT returns field for the earlier months i.e., before the announcement of demonetization. The assessee had also declared sales made in cash in their books of accounts and filed necessary return of income and paid taxes on said income. The appellant has also made cash deposits regularly before and during that period including the notes which are not banned and therefore, it is not a case of amount of deposit in specified bank notes has came out of undisclosed source or under any circumstances only to change the colour of the money. From the details filed by the assessee, it is evident that during the month of November and December, the assessee has made almost more than 5 crores cash deposit which includes various demonetized currency and regular notes. Further, the Assessing Officer has accepted fact that out of total cash deposits, only a sum of Rs. 1,82,37,000/- is in specified bank notes. From the above, it is very clear that there is no significant change in the pattern of cash sales, cash collection and cash deposit during demonetization period, when compared to earlier period in the same financial year and also during immediate preceding financial year. Therefore, we are of the considered view that the assessee has satisfactorily explained source for cash deposit made during demonetization period in specified bank notes and thus, the Assessing Officer is completely erred in making additions u/s. 69 of the Act.

10. Coming back to the observations of the Assessing Officer with regard to GO/notification issued by the RBI and Government of India, to deal with specified bank notes. The Assessing Officer is mainly on the issue of notification issued by the RBI to deal with the specified bank notes and argued that the assessee is not one of the eligible person to accept or to deal with specified bank notes and thus, even if assessee furnish necessary evidence, the assessee cannot accept specified bank notes after demonetization and the explanation offered by the assessee cannot be accepted. No doubt specified bank notes of Rs. 500 & Rs. 1000 has been withdrawn from circulation from 09th November, 2016 onwards. The Government of India and RBI has issued various notifications and SOP to deal with specified bank notes. Further, the RBI allowed certain category of persons to accept and to deal with specified bank notes up to 31st December, 2016. Further, the specified bank notes (cessation of liability) Act, 2017, also stated that from the appointed date no person can receive or accept and transact specified bank notes, and appointed date has been stated as 31st December, 2016. Therefore, there is no clarity on how to deal with demonetized currency from the date of demonetization and up to 3Ist December, 2016. Therefore, under those circumstances, some persons continued to accept and transact the specified banknotes and deposited into bank accounts. Therefore, merely for the reason that there is a violation of certain notifications/GO issued by the Government in transacting with specified bank notes, the genuine explanation offered by the assessee towards source for cash deposit cannot be rejected, unless the Assessing Officer makes out a case that the assessee has deposited unaccounted cash into bank account in specified bank notes.

11. We farther, noted that the Central Board of Direct Taxes had issued a circular for the guidance of the Assessing Officer to verify cash deposits during demonetization period in various categories of explanation offered by the assessee and as per the circular of the CBDT, examination of business cases, very important points needs to be considered is analysis of bank accounts, analysis of cash receipts and analysis of stock registers. From the circular issued by the CBDT, it is very clear that, in a case where cash deposit found in business cases, the Assessing Officer needs to verify the explanation offered by the assessee with regard to realization of debtors where said debtors were outstanding in the previous year or credited during the year etc. Therefore, from the circular issued by the CBDT, it is

very clear that, while making additions towards cash deposits in demonetized currency, the Assessing Officer needs to analyze the business model of the assessee, its books of account and analysis of sales etc. In this case, if you go through analysis furnished by the assessee in respect of total sales, cash sales realisation from debtors and cash deposits during financial year 2015-16 & 2016-17, there is no significant change in cash deposits during demonetization period. Therefore, we are of the considered view that when there is no significant change in cash deposits during demonetization period, then merely for the reason that the assessee has accepted specified bank notes in violation of circulation/notification issued by Government of India and RBI, the source explained for cash deposits cannot be rejected. In our considered view, to bring any amount u/s. 69 of the Act, the nature and source of investment, needs to be examined. In case the assessee explains the nature and source of investment, then the question of making addition towards unexplained investment u/s. 69 of the Act does not arise. In this case, the source of deposits has not been disputed and has been created out of ordinary business sales which has been credited into books of accounts and profits has also been duly included in the return of income filed in relevant assessment year. Therefore, we are of the considered view that, additions cannot be made u/s. 69 of the Act and taxed u/s. I l 5BBE of the Act towards cash deposits made to bank account.

12. At this stage, it is relevant to consider certain judicial precedents relied upon by the Id. Counsel for the assessee. The Ld. Counsel for the assessee relied upon the decision of Delhi High Court in the case of Agson Global Pvt Ltd vs ACIT [2022} 325 CTR 001. The Hon'ble Delhi High Court held that additions made on the sole ground of deviation in the ratio of cash sales and cash deposits during the demonetization period with that of earlier period, is improper and unlawful.

13. The assessee had also relied upon the decision of ITAT Indore Bench in the case of Dewas Soya Ltd, Ujjain vs ITO in ITA No. 336/Ind/2012, where it has been held as under:

The Hon'ble Indore ITAT Bench in the case of DEWAS SOYA LTD, UJJAIN vs. Income Tax (Appeal No. 336/lnd /2012 has held that," the claim of the appellant that such addition resulted into double taxation of the same income in the same year is also acceptable because on one hand cost of the sales has been taxed (after deducting gross profit from same price ultimately credited to profit & loss account) and on the other hand amounts

received from above parties has also been added u/s 68 of the Act. This view has been held by the Hon'ble Supreme Court in the case of CIT vs. Devi Prasad Vishwnath Prasad (1969) 72 /TR 194(SC) that "It is for the assessee to prove that even if the cash credit represents income, it is income from as source, which has already been taxed." The assessee has already offered the sales for taxation hence the onus has been discharged by it and the same income cannot be taxed again."

14. The Id. DR, has relied upon the decision of ITAT, Hyderabad Benches, in the case of Vaishnavi Bullion Pvt Ltd vs ACIT Taxsutra 914/ITAT/2022 (Hyd). We,find that in the said case, the Tribunal noted that CFSL report, books and statement are contrary to assessee 's claim which are of post demonetization period. Under these facts, the Tribunal came to the conclusion that additions made towards cash deposits during demonetization period, assessee could not explain proper source. In this case, on perusal of details and records, we find that the assessee has filed all details to explain source for cash deposits and on the basis of details filed by the assessee, the Assessing Officer never disputed fact that source for cash deposit is not out of ordinary business receipts, which has been accounted in the books of accounts of the assessee and further, there is no deviation in cash deposits duringdemonetization period when compared to earlier period in same financial year and in earlier financial year. Therefore, we reject the case laws relied upon by the ld. DR.

15. In this view of the matter and by considering facts and circumstances of this case, we are of the considered view that the Assessing Officer erred in making additions towards cash deposits during demonetization period u/s. 69 of the Act. The Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer. Thus, we set aside the order passed by the CIT(A) and direct the Assessing Officer to delete additions made towards cash deposits u/s. 69 r.w.s.115 5BBE of the Act."

13. The Visakapatnam Bench of the Tribunal in the case of ITO Vs. Sri Tatiparti Satyanarayana in ITA No.76/Viz/2021, C.O. No.42Niz/2014 (order dated 16.03.2022) held that dealing in SBNs prior to the appointed day i.e., 31.12.2016 cannot be prohibited and the source of deposit needs to be examined. The relevant finding of the Visakapatnam Bench of the Tribunal reads as follows:

"9. We have heard both the parties and perused all the documents on record. We find that there was sufficient cash balance with the assessee as detailed in page No.30 of the paper book. The Specified Bank Notes (Cessation of Liabilities) Act, 2017, defines "appointed day" vide Section 2(J)(a). As per Section 2(1)(a), "appointed day" means the 31st Day of December 2016. Section 5 of the Specified Bank Notes (Cessation of Liabilities) Act, 2017 also deals with prohibition on holding, transferring or receiving specified bank notes. Section 5 states that "On and from the appointed day, no person shall knowingly or voluntarily, hold, transfer or receive any specified bank note". We therefore, find that the specified bank notes can be measured in monetary terms since the guarantee of the Central Government and the liability of Reserve Bank of India does not cease to exist till 31.12.2016. In view of the above, the contention of the Ld.DR, treating the receipt of SBNs from cash sales as illegal and thereby invoking the provisions of section 69A is not valid in law. Therefore, we dismiss this ground of the Revenue."

14. In view of the aforesaid reasoning and judicial pronouncements cited supra, we hold that both the AO and the CIT(A) have erred in holding that assessee, prior to the appointed day i.e., 31.12.2016, was prohibited from accepting the SBNs and addition of the same under section 69 A of the Act is warranted.

15. However, in the instant case, I notice that the AO and the CIT(A) have not examined the source of the aforesaid cash deposits. For the limited purpose of examining the same, the issue is restored to the files of AO. The AO is instructed to examine the source of cash deposits. The assessee shall produce necessary evidence in support of her case. It is ordered accordingly.

16. In the result, appeal filed by the assessee is allowed for statistical purposes."

6. In light of the aforesaid discussions, and respectfully following the various decisions of the Tribunal (Supra), we do not countenance the action of the Assessing Officer and delete the addition.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 28th June, 2024 at Chennai.

Sd/-	**Sd/-**
(एबी टी वर्की **)**	**(**एस**.** आर**.** रघुनाथा**)**
(ABY T VARKEY)	**(S. R. RAGHUNATHA)**
न्यायिक सदस्य**/Judicial Member**	लेखासदस्य**/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated, the 28th June, 2024
JPV
आदेश की प्रतिलिपि अग्रेषित/Copy to:

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