



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND  
MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.60/CTK/2024**

Assessment Year : 2017-18

Mr Bichitrananda Rout, At: Dhiha Sahi, Shankarpur, Cuttack	Vs.	ITO, Ward -2(1), Cuttack
PAN/GIR No.BXKPR 3067 C		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri B.R.Panda, Adv

Revenue by : Shri S.C.Mohanty, Sr DR

**Date of Hearing : 10/07/2024**

**Date of Pronouncement : 10/07/2024**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id CIT(A), NFAC, Delhi dated 12.01.2024 in Appeal No.CIT(A), Cuttack/10220/2019-20 for the assessment year 2017-18.

2. Shri B.R.Panda, Id AR appeared for the assessee and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

3. Ld AR has filed written submission as follows:

1. That in filing of said Appeal before this Hon'ble forum stating inter-alia that the Authorities below had disposed of the matter without proper appreciation of the issues involved for considering the facts and the points of law raised in the matter involving the sale proceed derived at Rs.69,79,500/- from sale of fruits etc. and adopted the profit @8% in accordance with the provision of section 44AD of the IT Act.

2. That no proper consideration I of the law and the facts could be appreciated rather wrongly held that a sum of Rs.8,35,500/- out of the sale proceeds had remained as unexplained money which attracted provision Section 69A of the IT Act is totally wrong, absurd and illegal in the facts of the case and the Appellant urged for deletion of the matter and submitted that Rs.8,35,500/- got deposited in the Bank Account should not have been treated as unexplained Income U/s69A of the IT Act and there was no concealment, unexplained and suppression of any manner got attracted the provision of Section 69A of the IT Act.

3. That the Appellant in furnishing the Grounds of Appeal had already submitted stating inter-alia that the money deposited in the Bank Account at Rs.8,35,500/- out of the sale proceeds should not have been treated as unexplained money U/s69A. of the IT Act and drawn the tax liability under the provisions of Section 115BBE of the IT Act.

4. That the Appellant in addition to submitting the above had categorically stated that the addition was made in mechanical manner holding the amount deposited at Rs.8,35,500/- taxable U/s 69A of the IT Act is totally wrong improper and contrary to the facts of the case. It is submitted that the cash balance available at Rs.24,34,404/- was inclusive of Rs.21,85,500/-which further consisted of Rs.8,35,500/- in SBN (Demonetization amount)The whole transactions derived amounting to Rs.69,79,500/- in the relevant year from business etc., got properly explained and stated in furnishing of the Accounts and section 44AD of the IT Act should have been applied without making separate addition U/s69A of the IT Act, therefore this Hon'ble Forum should appreciate the illegalities caused in the matter.

5. That that the demonetization amount should not have been added in the facts of the case as is most absurd and illegal which got already been considered in the similar Appellate Forums in most preferably by the Hon'ble Tribunal ((C" Bench of Chennai genuine in the case ITA No.557/CHNY/2022 for the Assessment year 20:1,7-18 that is the same year absolutely applicable in the case of the Appellant because in the relevant year in deposing of the appeal vide dated 04.01.2023 the Hon'ble Division Bench held that the amount demonetized with effect from 08.11.2016 against the transaction of "fruits" which found to be perishable was forced to get accepted the demonetization cash which cannot be taxed as unexplained cash credit U/s115BB of the IT Act.

6. That the Hon'ble Division Bench even if found that from SI. No. 7 to 23 prescribed the payments to Central Govt. Account through different institutions commencing from Government hospital, purchase of Railway tickets from counter etc., even if had dealt with the acceptance of the demonetization amount but the relaxation to made have found the goods for transaction was perishable and the amount collected got deposited in the Bank Accounts which, were fully explainable and thus deposited the demonetization money within the period fixed till 31/12/2016 the date finally fixed by the Govt. of India.

7. That keeping in view of the aforesaid points decided by the Coordinate Division Benches which got already explained in the case of JKT Fabrics {P}(Ltd} Vrs. DCIT another Division Bench of the Hon'ble Mumbai Tribunal in IT Appeal No. 5162 {MUM} 1999 for the Assessment year 1997-98 decided vide dated 29.04.2005 and held that the order of the coordinate Division Bench is fully 'and squarely binding on the Id. Single Judge to the extent that the Id.SMC Bench who cannot differ from the decision with the Division Bench unless the judgment relied is either got over ruled by the Full Bench or the Hon'ble Supreme Court. Therefore, the Appellant begs to draw the judicious reliance to the principles decided already.

8. That in furnishing the orders of the another Hon'ble Bench that was ITAT Vrs.DCIT of Income tax and Others had specifically held stating that in referring to larger Bench by Id. Members of the Hon'ble Bench the Regulation 98A is required to be furnished under Appendix XIX{B} and the situation given for sanction in 218 ITR 275 {Se} which preferably spoke that it should be given to Larger or Special Bench which can be made by Id. President after getting the regulatory proceedings laid down under Regulation 98(A} of the statute. But in this case it is humbly and with most respectfully submitted that this Hon'ble Single Judge Bench has no jurisdiction and otherwise is not competent to refer the matter to a "If Division Bench" of this Hon'ble Tribunal if at all to be adjudicated wherein the Hon'ble Judicial Member will be a judge for hearing of this case. Because he has already been got prejudiced as well as influenced with the matter and thus is not accepted to preside over the Bench. The principles decided by Hon'ble Coordinate Benches of this Hon'ble Tribunal had settled and prescribed the guide lines and formed the opinion to render in deciding the judicial issues.

9. That so far section 69(A} of the IT Act is concerned that has not to be entertained in the case the Appellant because no concealment unexplained or suppression of any amount is found or detected by

the IT department as the amount brought for transaction got deposited in the Bank after having recorded the transactions and no satisfaction got disclosed in this case. The source of deposits found to be cash etc that were demonetization amount need to be accepted within the prescribed period which cannot be an addition U/s69 or 69(A) of the IT Act and has also been held by the Hon'ble Bench of ITAT Bangalore referring to If Single Bench". the Hon'ble SMC (C) Bench Bangalore decided the matter on 31.10.2022 after referring number of cases of the Coordinate Benches of the Hon'ble ITAT. Further the Hon'ble Bench of the coordinate bench of the Chennai Bench held that Section 69 is not applicable in the facts of the case because of no suppression of amount and also followed the principles decided by the Hon'ble Delhi High Court in the case of Agson Global P. Ltd Vrs. ACIT 325CTR 001 holding that addition of cash sale of items against demonetization amount should not be added neither U/s69 nor Section 69A of the IT Act and not to be held irregular in the facts of the case.

10. That further it is submitted that the amount transacted, in piecemeal basis which was subject to advice of the concerned Bank and allowed the deposits after having their facilities advised at that time and the amount then got deposited and in no case section 69 or 69A of the Act would be applicable and the transaction would be treated as irregular, illegal and absurd as has not been given to the amount of the Hon'ble SMC Bench. It may kindly be considered that the principles of law already decided and examined in number of cases may please be applied without referring this matter to any other forum against the Appellant and to delete the addition of Rs.8,35,500/- and the matter has got posted for hearing to 10.07.2024 should not be sent to Hon'ble Division Bench by this Hon'ble Tribunal which would be highly unlawful in the facts of the case keeping in views of the Hon'ble Court's Order decided by Hon'ble Benches of the ITAT in different parts of the Country.

11. That in view of the provisions of the statute and basing on the orders of the Coordinating Benches of the Hon'ble Tribunals the following issues emerged and brought for kind consideration of this Hon'ble Bench:-

I. The order of the Hon'ble Mumbai Bench in ITA No. 5162(MUM) 1999 for the Assessment Year 1997-98 vide order dated 29.04.2005 categorically held that a Single Judge cannot differ from the decision of the Divisions Bench except when the decision or a judgment relied upon is overruled by Full -Bench or the Hon'ble Supreme Court.

II. The Hon'ble Income Tax Appellate Tribunal (C) Bench Chennai vide ITA No. 587 /CHNY /2022 for the Assessment year 2017-18 vide order dated 04.01.2023 for the Assessment year 2017-18 which "squarely relevant to the case of the Appellant" had categorically held that the dealing of the "fruits" since is highly perishable mainly transactions were made for cash deposits of the demonization cash which was acceptable from 08.11.2016 and no addition U/s69 could be made and the acceptance was permissible till the appointed date i.e.,31.12.2016.

III. The Hon'ble SMC Bench, Bangalore ITA No.68/BNG/2023 relying upon the principles of different Benches the Hon'ble Bench as well as the Hon'ble High Court in the case of AGSON Global Pvt. Ltd Vrs. ACIT 325 CTR 001 deleted the additions on the grounds of cash deposits during demonization period and the Hon'ble Bench considering the different Instructions and circulars held that no question of addition on the ground of demonization cash to be made U/s 69/69(A) of the IT Act.

IV. The precedent and judicial observations of the different Benches have been drawn to the attention of the Hon'ble SMC and may further be tested within the scope of the provisions.

Further the Appellant in this case invokes and brings to the kind consideration of this Hon'ble Bench that the Id. SMC is bound to follow the direction and the decision of the Hon'ble Divn. Bench and it cannot refer to further the Divn. Bench 'unless Regulation 98(A) has been fully complied with Appendix XIX(B) of the Statute which can be sent for the kind of approval of the Hon'ble President of the Tribunal which is not done in this case.

Further it is explained that this relevant matter since is posted to 10.07.2024 for the adjudication of the Divn. Bench of Tribunal where the Hon'ble Judicial Member may preside over the Bench and with great respect it is submitted that since his goodself is already prejudiced having been acquainted with the case may not adjudicate this matter and the Hon'ble SMC is bound to follow the decisions and principles laid down by the Divn. Benches of Hon'ble Tribunal. Unless the order of the Hon'ble Division Bench is overruled by the Larger Bench or the Hon'ble Supreme Court.

Thus may please be considered with further chance to urge other grounds by the Appellant in the interest of justice and obliged. "

4. The main crux of Id AR's arguments is two folds, first is that the assessee's case is one which the total addition is less than Rs.50 lakhs and, therefore, it was a Single Member case, which has also been heard by a Single Member but the same has now been transferred by the Single Member Bench to a Division Bench without a speaking order.

5. The second issue is on merits. It was the submission that the assessee had cash balance of Rs.24,34,404/- as on 1.11.2016 and the assessee had deposited Rs.21,85,500/-, which included Specified Bank Notes (SBNs) of Rs.8,35,500/-. It was the submission that the Assessing Officer had treated the SBNs deposited by the assessee in his bank account as unexplained investment of the assessee and out of balance of the turnover the Assessing Officer had estimated the income of the assessee at 8%. It was the submission that as the SBNs are deposited out of the cash available with the assessee, the addition of Rs.8,35,500/- representing the SBNs was not liable to be made. It was the further submission that the assessee is not challenging the addition made by the Assessing Officer representing 8% of the balance of the turnover. It was the submission that the addition as made by the Assessing Officer of Rs.8,35,500/- is liable to be deleted.

6. It was the submission that in regard to first issue of transfer of file from the SMC Bench to Division Bench without the speaking order is invalid that the SMC Bench was bound by the order of the Division Bench in the

case of Mr Ganapathy Palaniyappan vs DCIT in ITA No.557/Chny/2022 for A.Y.2017-18 order dated 4.1.2023, wherein, the Co-ordinate Bench of this Tribunal has held as follows:

"10. Having said so, let us come back to the source for cash deposits. The assessee has explained source for cash deposits out of sale receipts. In fact, the AO and CIT(A) never disputed fact that source for cash deposits is out of sale proceeds for the month and for earlier months. In fact, the CIT(A) has accepted the arguments of the assessee and also directed the AO to assess cash deposits under the head income from other sources, by considering explanation offered by the assessee. But, the only objection of the AO and CIT(A) was that the assessee has accepted specified bank notes, even though RBI has prohibited dealing with specified bank notes from 08.11.2016 onwards except for certain emergency services. We do not find any merit in the reasons given by the AO and CIT(A) for simple reason that no doubt from 08.11.2016 midnight onwards demonetized currency notes of Rs. 500 and Rs. 100 was legally barred. Further, the RBI has issued various guidelines and SOPs for dealing with specified bank notes from 08.11.2016 onwards till the bill Specified Bank Notes (Cessation of Liabilities) bill, 2017 was notified by the Government. As per said bill, from the appointed date, no person shall knowingly or voluntarily, hold, transfer or receive any specified bank note. Further, as per section 3 of said bill, on or from the appointed date notwithstanding anything contained in the Reserve Bank of India Act, 1934 or any other law for the time being in force, the specified bank notes which have ceased to be legal tender, in view of the notification of the Government of India dated 08.11.2016 shall cease to be liabilities of the RBI u/s. 34 and shall cease to have the guarantee of the Central Government under sub-section (1) section 26 of the said Act. From the above bill, it is very clear that, on or from the appointed date, no person shall hold, transfer or receive any specified bank notes because said note does not have guarantee of the RBI. In other words, up to appointed date i.e., 31.12.2016 there is no restriction in holding or receiving specified bank notes, even though its legal tender was banned from 08.11.2016 onwards. Since, there is no blanket prohibition on receiving demonetized currency notes up to 31.12.2016, we are of the considered view that, when the assessee has explained reasons for accepting specified bank notes even after 08.11.2016, the AO ought to have accepted the explanation furnished by the assessee when he is not disputing the nature of business and source for cash deposits. In our considered view, what is relevant to decide the issue is, whether the assessee is able to explain source for cash deposits or not. In case, the assessee explains the source for cash deposits, even though there is certain violation of any other Acts or Rules, the AO cannot make addition towards cash deposits.

11. We further noted that a similar issue has been considered by the coordinate bench of ITAT, Visakhapatnam in the case of ITO vs Sri Tatiparti Satyanarayana (Supra), where the Tribunal after considering cash deposits out of specified bank notes after 08.11.2016 and also by considering Specified Bank Notes (Cessation of Liability) bill, 2017 held that the AO is incorrect in treating receipt of specified bank notes from cash sales as illegal and thereby, by invoking provisions of section 69 of the Act. The relevant findings of the Tribunal are as under:

"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(1)(a). As per Section 2(1)(a), "appointed day" means the 31 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."

12. In this view of the matter and by following the decision of the coordinate bench of ITAT, Visakhapatnam in the case of ITO vs Sri Tatiparti Satyanarayana (Supra), we are of the considered view that the AO as well as the CIT(A) has erred in sustaining addition towards cash deposits to bank account u/s. 69 of the Act and also levied tax u/s. 115BBE of the Act. Hence, we direct the AO to delete addition made towards cash deposits u/s. 69 of the Act.

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

7. The addition as made by the Assessing Officer and confirmed by the Id CIT(A) is liable to be deleted. Ld AR further relied upon the decision of the ITAT 'SMC' Bench Bangalore in the case of Shri Krishnamurthy Nagaraj vs ACIT in ITA No.681/Bang/2023 for A.Y. 2017-18 order dated 30.10.2023, wherein, it has been held as follows:

"7. I have heard the rival submissions and perused the material on record. The AO and the CIT(A) had made the impugned addition solely for the reason that assessee was not authorized person to accept the SBNs subsequent to the demonetization. Since the SBNs were not legal tender, it was concluded by the AO and the CIT(A) that the source of cash deposit cannot be accepted. The AO and the CIT(A) have not examined / verified the source of the cash deposits. On identical facts, I have, in the case of Smt. Malapur Mounika Vs. ITO in ITA No.599/Bang/2023 (order dated 30.10.2023), held that SBNs are though not legal tender, assessee is not precluded from accepting the same upto the "appointed day" mentioned in SBN (Cessation of Liabilities Act, 2017) and accepting of the SBNs upto the appointed date i.e., 31.12.2016 in discharging of a debt, the person concerned cannot be penalized. The relevant finding of the Bangalore Bench of the Tribunal in the case of Smt. Malapur Mounika Vs. ITO (supra) read as follows:

"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 assessee. The assessee 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 sum 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.

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 31st 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 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 44AB 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 ITAT Indore Bench in the case of DEWAS SOYA LTD, UJJAIN v/s Income Tax (Appeal No 336/Ind/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 assessee. 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 CIT(A) therefore held that the plea of the assessee cannot be accepted and accordingly dismissed the appeal of the assessee. Aggrieved by the order of the CIT(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 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. 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 115BBE 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 146 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 assessee. 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."

Further reliance is placed on the decision of the Hon'ble Vishakapatnam Tribunal in the case of ACIT Vs. Hirananna Jewelers in ITA 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 has 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.

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 M/s. 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 u/s. 69 of the Act as unexplained investment and also can be taxed u/s. 115BBE 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 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 GST/VAT 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 come 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 31st 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 further, 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 beenduly 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. 115BBE 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/Ind /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 ITR 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 Taxuttra 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 Id. 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. 115BBE 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.42/Viz/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(1)(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 69A 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."

8. In view of the above finding of the Bangalore Bench of the Tribunal, I hold that assessee cannot be denied the benefit of source of cash deposits of the SBNs since he has received the same prior to the appointed day mentioned in the SBN (Cessation of Liabilities Act, 2017). However, as regards the issue of source of cash deposit, there is no verification done by the AO or the CIT(A). Hence, the issue is restored to the file of the AO. The AO is directed to examine the claim of the assessee whether cash deposits

are out of receipts from trade activities. If it is found so, the source of cash deposit ought to be accepted as explained. It is ordered accordingly.

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

8. It was the submission that in view of the decision of the Co-ordinate bench of Chennai Bench and SMC Bangalore Bench, the SMC Bench was liable to follow the same and grant relief to the assessee in view of the decision of ITAT Mumbai Bench in the case of J.K.T. Fabrics (P) Ltd. Vs CIT, (2005) 004 SOT 0084, wherein, it has been held that it is not open to the Bench of this Tribunal to differ the view taken by the Co-ordinate Bench of equal strength. The only option in such a case if the Co-ordinate Bench doubts the correctness of such decision is to refer the matter for constitution of a larger Bench.

9. In reply, Id Sr DR submitted that this is a case where no return of income was filed by the assessee and the evidences now produced in the form of cash books are fresh evidences in complete violation of the provisions of Rule 29 of ITAT Rules and provisions of Rules of 46A of I.T.Rules insofar as no reasons have been provided by the assessee for the production of these evidences now. The Tribunal cannot consider such evidences. It was the further submission that this was a case of non-compliance before both the lower authorities. It was the submission that the order of the Id CIT(A) and that of the AO are liable to be upheld.

10. In regard to issue of transfer of file from SMC Bench to Division Bench, Id Sr DR did not raise any objection.

11. We have considered rival submissions. At the outset, the moto of the Tribunal is to be understood. It is impartial, easy and speed justice. The concepts of above three terms have substantial importance. This is why the intricate provisions of civil procedure code are not made directly applicable to the proceedings before the Tribunal. This is also the reason why the strict interpretation of the Evidence Act is also not made applicable in the functioning of the Tribunal. The Tribunal functions on the minimum requirement of procedure. The fixation of a case before the Single Member (SMC) Bench or Division Bench is by administrative act. The administrative provisions have held that the cases which have income below Rs.50 lakhs can be heard by SMC Bench. For a Member to be eligible to sit as a Single Bench, there is requirement of minimum 5 years experience on the Bench and being so made eligible by specific order. The Division Bench of the Tribunal is constituted by an Accountant Member and a Judicial Member. There is no requirement of specific requirement that case where the income is below Rs.50 lakhs should be compulsorily heard by a SMC Bench. It can be very well be heard by Division Bench. In the present case, admittedly, the appeal was originally posted before the SMC Bench, in which, Shri George Mathan, Judicial Member was the Presiding Officer. On 18.6.2024, in the course of hearing of the SMC Bench, after discussion of the case, it

was found by the Presiding Officer that this case is required to be heard by Division Bench and it was informed to the Id counsels, who were present i.e. Shri B.Panda, Sr. Advocate and Shri B.R.Panda, Advocate and Id Sr DR Shri S.C.Mohanty. The copy of the order sheet entry transferring the file from SMC Bench to Division Bench is extracted below:

"dt.18.6.2024 : Assessee represented by :Basudev Panda, Sr. Adv and B.R.Panda, Advocate.

Department represented by :S.C.Mohanty, Sr.DR.

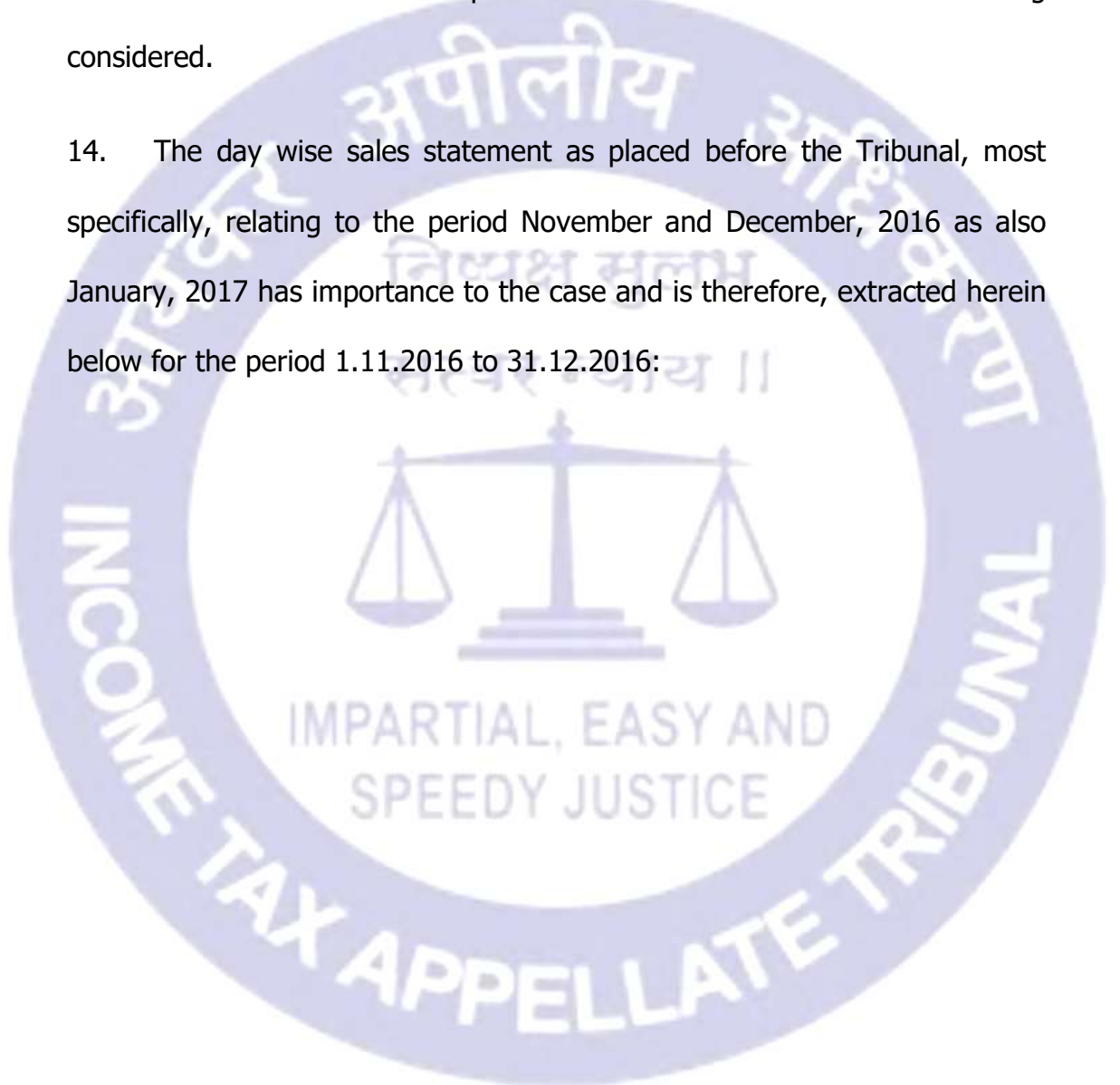
The Hon'ble Bench is directed to fix this case before the Division bench on 10.7.2024. Case is adjourned to 10.7.2024. Both the parties are informed in the open court."

12. Consequently, the appeal of the assessee was transferred to Division Bench constituted by the present Members. It must also be mentioned here that the Presiding Officer, who was sitting in SMC Bench, is also part of the Division bench here in the present appeal. This being so, the arguments raised by Id AR that SMC Bench does not have the power to transfer the file to Division bench without speaking order does not stand to reason and the said argument is rejected. In any case the reasons were also explained to the Counsels who had appeared before the SMC bench and it is so recorded in the order sheet that "Both the parties are informed in the open court."

13. Coming to the merits of the case, we are live to the fact that Sr. DR has raised the ground that fresh evidences have been produced in violation of Rule 29 of I.T.A.T Rules and in violation of Rule 46A of I.T.Rules.

However, as substantial justice has now been pitted against substantial justice, in the interest of substantial justice and considering the fact that the assessee has been non-cooperating before the lower authorities the evidences and details now produced before the Tribunal are being considered.

14. The day wise sales statement as placed before the Tribunal, most specifically, relating to the period November and December, 2016 as also January, 2017 has importance to the case and is therefore, extracted herein below for the period 1.11.2016 to 31.12.2016:



BICHITRANANDA ROUT  
SHANKARPUR, DIHA SAHI, CUTTACK-753012

DAYWISE SALES STATEMENT FOR THE YEAR 2016-2017

DATE	PARTICULARS	RECEIPTS			PARTICULARS	PAYMENTS		
		CASH	CREDIT SALES			EXPENSES	CASH DEPOSIT	CREDIT DEPOSIT
01.04.2016	OPENING BALANCE B/F	80.00						
01.04.2016	CASH SALES A/C	6,830.00						
01.04.2016	SALES A/C- PRASANNA		50,000.00					
02.04.2016	CASH SALES A/C	8,200.00						
06.04.2016	SALES A/C- PRASANNA		32,000.00					50,000.00
03.04.2016	CASH SALES A/C	950.00						
04.04.2016	CASH SALES A/C	1,000.00						
05.04.2016	CASH SALES A/C	9,000.00						
05.04.2016	CASH SALES A/C	6,800.00						
06.04.2016	CASH SALES A/C	500.00						
								11,800.00
								19,850.00
								350.00
08.04.2016	CASH SALES A/C	8,675.00						
08.04.2016	CASH SALES A/C							1,250.00
08.04.2016	CASH SALES A/C							7,500.00
09.04.2016	CASH SALES A/C	550.00						750.00
09.04.2016	CASH SALES A/C							2,000.00
10.04.2016	CASH SALES A/C	8,250.00						250.00
11.04.2016	CASH SALES A/C	12,300.00						70.00
12.04.2016	CASH SALES A/C	4,750.00						2,970.00
13.04.2016	CASH SALES A/C	470.00						130.00
14.04.2016	CASH SALES A/C	10,500.00						50.00
14.04.2016	SALES A/C - BDS, BHADRAK		50,000.00					
15.04.2016	CASH SALES A/C	3,150.00						500.00
16.04.2016	CASH SALES A/C	1,500.00						350.00
17.04.2016	CASH SALES A/C	2,450.00						5,000.00
18.04.2016	CASH SALES A/C	5,250.00						
18.04.2016	SALES A/C - (NG BARIPADA)		20,000.00					50,000.00
19.04.2016	SALES A/C	2,800.00						390.00
20.04.2016	CASH SALES A/C	2,540.00						
21.04.2016	CASH SALES A/C	15,420.00						120.00
22.04.2016	CASH SALES A/C	29,500.00						50.00
22.04.2016	CASH SALES A/C							360.00

Bichitra nanda Rout



12.11.2016	CASH SALES A/C	2,540.00		12.11.2016	LOADING & UNLOADING EXP	150.00		
13.11.2016	CASH SALES A/C	36,425.00		13.11.2016	BANK A/C (CASH DEPOSIT)		120,000.00	
				13.11.2016	COLD STORE RENT	2,000.00		
				13.11.2016	LOADING & UNLOADING EXP	680.00		
				13.11.2016	TRANSPORTATION EXPENSES	250.00		
14.11.2016	CASH SALES A/C	71,500.00		14.11.2016	BANK A/C (CASH DEPOSIT)		74,000.00	
				14.11.2016	SALARY EXPENSES	3,410.00		
				14.11.2016	PUJA EXPENSES	150.00		
15.11.2016	CASH SALES A/C	1,320.00		15.11.2016	OFFICE EXPENSES	210.00		
17.11.2016	CASH SALES A/C	19,540.00		17.11.2016	BANK A/C (CASH DEPOSIT)		55,000.00	
17.11.2016	SALES A/C (P.K.SAHU)		70,000.00	17.11.2016	LOADING & UNLOADING EXP	1,270.00		
				17.11.2016	PACKING MATERIAL	80.00		
				17.11.2016	OFFICE EXPENSES	50.00		
18.11.2016	CASH SALES A/C	16,240.00		18.11.2016	BANK A/C (CASH DEPOSIT)		46,000.00	
				18.11.2016	LOADING & UNLOADING EXP	200.00		
				18.11.2016	TRANSPORTATION EXPENSES	250.00		
19.11.2016	CASH SALES A/C	11,140.00		19.11.2016	BANK A/C (CASH DEPOSIT)		26,000.00	
				19.11.2016	OFFICE EXPENSES	160.00		
20.11.2016	CASH SALES A/C	3,150.00		20.11.2016	LOADING & UNLOADING EXP	270.00		
				20.11.2016	TRANSPORTATION EXPENSES	300.00		
21.11.2016	CASH SALES A/C	3,240.00		21.11.2016	BANK A/C (CASH DEPOSIT)		30,000.00	
				21.11.2016	TELEPHONE EXPENSES	120.00		
22.11.2016	CASH SALES A/C	1,400.00		22.11.2016	BANK A/C (CASH DEPOSIT)		100,000.00	
				22.11.2016	SALES A/C (P.K.SAHU)			70,000.00
				22.11.2016	LOADING & UNLOADING EXP	160.00		
				22.11.2016	TRANSPORTATION EXPENSES	300.00		
23.11.2016	CASH SALES A/C	1,475.00		23.11.2016	BANK A/C (CASH DEPOSIT)		51,000.00	
				23.11.2016	COLD STORE RENT	200.00		
				23.11.2016	PUJA EXPENSES	120.00		
24.11.2016	CASH SALES A/C	1,205.00		24.11.2016	TRANSPORTATION EXPENSES	500.00		
25.11.2016	CASH SALES A/C	22,650.00		25.11.2016	BANK A/C (CASH DEPOSIT)		95,000.00	
				25.11.2016	LOADING & UNLOADING EXP	180.00		
				25.11.2016	OFFICE EXPENSES	120.00		
				26.11.2016	TRANSPORTATION EXPENSES	250.00		
				26.11.2016	LOADING & UNLOADING EXP	420.00		
27.11.2016	CASH SALES A/C	2,540.00		27.11.2016	OFFICE EXPENSES	110.00		
28.11.2016	CASH SALES A/C	3,050.00		28.11.2016	BANK A/C (CASH DEPOSIT)		5,000.00	
				28.11.2016	BANK A/C (CASH DEPOSIT)		3,000.00	
				28.11.2016	BANK A/C (CASH DEPOSIT)		24,000.00	
29.11.2016	CASH SALES A/C	1,500.00		28.11.2016	BANK A/C (CASH DEPOSIT)		56,000.00	

Baldevrao narayan Rao



12.12.2016	CASH SALES A/C	11,540.00		12.12.2016	BANK A/C (CASH DEPOSIT)		21,000.00	
				12.12.2016	BANK A/C (CASH DEPOSIT)		34,000.00	
				12.12.2016	OFFICE EXPENSES	120.00		
				12.12.2016	TRANSPORTATION EXPENSES	250.00		
13.12.2016	CASH SALES A/C	3,240.00		13.12.2016	BANK A/C (CASH DEPOSIT)		110,000.00	
				13.12.2016	SALES A/C- NIRANJAN GIRI			30,000.00
				13.12.2016	TRANSPORTATION EXPENSES	250.00		
				13.12.2016	LOADING & UNLOADING EXP	250.00		
14.12.2016	CASH SALES A/C	2,450.00		14.12.2016	OFFICE EXPENSES	350.00		
15.12.2016	CASH SALES A/C	1,540.00		15.12.2016	TRANSPORTATION EXPENSES	250.00		
				15.12.2016	LOADING & UNLOADING EXP	500.00		
16.12.2016	CASH SALES A/C	1,240.00		16.12.2016	BANK A/C (CASH DEPOSIT)		6,500.00	
16.12.2016	SALES A/C- RAJESH		10,000.00	16.12.2016	BANK A/C (CASH DEPOSIT)		58,000.00	
				16.12.2016	OFFICE EXPENSES	80.00		
17.12.2016	CASH SALES A/C	13,650.00		17.12.2016	BANK A/C (CASH DEPOSIT)		140,000.00	
				17.12.2016	TRANSPORTATION EXPENSES	250.00		
18.12.2016	CASH SALES A/C	970.00		18.12.2016	LOADING & UNLOADING EXP	420.00		
19.12.2016	CASH SALES A/C	1,050.00		19.12.2016	BANK A/C (CASH DEPOSIT)		56,000.00	
				19.12.2016	SALES A/C- RAJESH			10,000.00
				19.12.2016	LOADING & UNLOADING EXP	500.00		
20.12.2016	CASH SALES A/C	1,245.00		20.12.2016	BANK A/C (CASH DEPOSIT)		70,000.00	
				20.12.2016	LOADING & UNLOADING EXP	440.00		
				20.12.2016	TRANSPORTATION EXPENSES	400.00		
				21.12.2016	OFFICE EXPENSES	150.00		
21.12.2016	CASH SALES A/C	1,745.00		21.12.2016	BANK A/C (CASH DEPOSIT)		30,000.00	
22.12.2016	CASH SALES A/C	14,340.00		22.12.2016	BANK A/C (CASH DEPOSIT)		5,000.00	
23.12.2016	CASH SALES A/C	1,240.00		23.12.2016	BANK A/C (CASH DEPOSIT)		94,000.00	
23.12.2016	SALES A/C- KALIA, JAGATPUR		10,000.00	23.12.2016	BANK A/C (CASH DEPOSIT)			
				23.12.2016	LOADING & UNLOADING EXP	450.00		
24.12.2016	CASH SALES A/C	1,045.00		24.12.2016	LOADING & UNLOADING EXP	250.00		
25.12.2016	CASH SALES A/C	51,365.00		25.12.2016	LOADING & UNLOADING EXP	200.00		
				25.12.2016	OFFICE EXPENSES	110.00		
26.12.2016	CASH SALES A/C	2,540.00		26.12.2016	BANK A/C (CASH DEPOSIT)		6,000.00	
				26.12.2016	SALES A/C- KALIA, JAGATPUR			10,000.00
				26.12.2016	LOADING & UNLOADING EXP	220.00		
				26.12.2016	OFFICE EXPENSES	70.00		
27.12.2016	CASH SALES A/C	43,240.00		27.12.2016	BANK A/C (CASH DEPOSIT)		56,000.00	
27.12.2016	SALES A/C- RAMA		12,000.00	27.12.2016	SALES A/C- RAMA			12,000.00
27.12.2016	SALES A/C- B DAS		30,000.00					
28.12.2016	CASH SALES A/C	52,350.00		28.12.2016	BANK A/C (CASH DEPOSIT)		35,000.00	
				28.12.2016	SALARY EXPENSES	2,620.00		
				28.12.2016	LOADING & UNLOADING EXP	310.00		
29.12.2016	CASH SALES A/C	21,455.00		29.12.2016	SALES A/C- B DAS			30,000.00
				29.12.2016	OFFICE EXPENSES	80.00		

*Balchitra in order Ravi A*



15. A perusal of the said day wise sales statement contains the details of the cash sales, details of various expenses and deposits in the bank account. These include the credit sales also. Surprisingly, the said account does not show any purchase. It can be presumed that the purchases are through bank account by payment of cheque. If this is so, then cash balance as on 1.11.2016 at Rs.24,34,404 would have no sanctity insofar as the entire statement as placed before us would vary. Further, a perusal of the entry as on 1.12.2016 shows the cash deposit of old notes of Rs.50,000/- and on 3.12.2016 old notes of Rs.26,500/-, whereas for all other cash deposits in the bank account, there is no reference of any old notes. A perusal of the assessment order in the present case, which is page 2 of the assessment order para 3 shows that the assessee has been depositing SNBs right from 10.11.2016 to 26.12.2016. These deposits are of various combinations of SBNs of 1000 and 500 currency. The total of the deposits of SBN is Rs.8,35,500/-. When these facts are considered with the decisions of Co-ordinate Bench as referred by Id AR, it becomes clear that in those cases, the relief has been granted to the assessee therein on the ground that they had opening cash in hand. Now cash in hand in this case has to come out of the cash book. In the present case, it is to be reiterated that what has been produced before us is not the cash book. It is only details of cash sales, credit sales, expenses incurred in cash and incurred on credit which has been produced. The actual cash availability as on

1.11.2016 has not been explained. It is further surprising that a fruit vendor having sales of about Rs.10,000 to Rs.15,000/- in a day is able to hold cash in hand of more than Rs.24 lakhs. This goes against normal probability. Under similar circumstances, SMC Bench of this Tribunal comprising of the said Judicial Member in the case of Pankaj Gupta vs ITO in ITA No.66/CTK/2023 order dated 16.5.2023 has held as follows:

'4. I have considered the submission of the Id. Sr. DR and the written submissions filed by the assessee. It is an admitted fact that the assessee's cash balance as on 08.11.2016 is only Rs.252.40. It is also an accepted fact that as on the date of demonetisation except for specified persons no other persons were permitted to transact in the demonetised currency. The assessee does not fall within the exempted category of persons to deal with the demonetized currency. With this in mind, if it is seen, the sale alleged to have been made by the assessee between 08.11.2016 and 12.11.2016 though shows availability of funds along with recovery from the debtors, still it cannot be said that this is a source for the specified bank notes being the demonetised currency which has been deposited in the bank on 12.11.2016. I am unable to even consider a position that Rs.28 lakhs SBNs could have been with the assessee before 08.11.2016 insofar as the cash book only shows cash availability of Rs.252.40. Admittedly, if the assessee desires to take the stand that the SBNs were the currency received between 08.11.2016 to 12.11.2016, it would be incumbent upon the assessee to prove to the revenue as to from whom he has received the SBNs. In the absence of such prove, the deposit of SBN to the extent of Rs.28 lakhs will have to be treated as the unexplained investment of the assessee. In these circumstances, I find no error in the order of the Id. CIT(A). Consequently, the appeal filed by the assessee stands dismissed.

5. In the result, appeal of the assessee is dismissed. ."

16. Admittedly, the facts in the assessee's case does not in any manner tally with the facts in the case of Shri Krishnamurthy Nagaraj (supra) or the facts in the case of Ganapathy Palaniyappan (supra). It must be mentioned here that the facts in the present case clearly shows that the assessee has been selling his merchandise and accepting SBNs in respect of the sales

even after the appointed date. No prudent individual would spread over the deposits of the SBNs over a period of two months from the date of Demonetisation more specifically several times he had to stand in a queue to deposit the said money, if he had such amount of SBN at the beginning of the Demonetisation. It is also accepted fact that except the specified persons, no other persons were permitted to transact in the demonetised currency. The assessee does not fall within the exempted category person to deal with the Demonetisation currency. It was however open to the assessee to specify from where he has received SBNs and in absence of such evidence, the addition as made by the Assessing Officer and confirmed by Id CIT(A) is liable to be confirmed and we do so.

17. It would also be worthwhile here to mention that the assessee as per cash sales statement produced shows Rs.24,34,404/- cash in hand and he has deposited Rs.21,85,500/- during the demonetisation period. This amount of Rs.21,85,500/- includes SBN currency of Rs.8,35,500/-. Therefore, if this is excluded, the balance available should be Rs.13,50,000/- but the balance as on 31.12.2016 is only Rs.4,57,869/- as per cash sales statement. Therefore, the balance of Rs.8,92,331/- if at all deposited would have to be considered as being of the non Demonetisation currency of 100 and 50 rupees. Nothing has been produced to prove this. Even then it still remains as to how the assessee has paid for the purchases.

In these circumstances, it must be considered that the Assessing Officer has been very reasonable in restricting the addition to Rs.8,35,500/-.

18. In the result, appeal of the assessee stands dismissed.

Order dictated and pronounced in the open court on 10/07/2024.

Sd/-  
**(Manish Agarwal)**  
ACCOUNTANT MEMBER

Cuttack; Dated - 10/07/2024  
B.K.Parida, SPS (OS)

sd/-  
**(George Mathan)**  
JUDICIAL MEMBER

**Copy of the Order forwarded to :**

1. The Appellant : Mr Bichitrananda Rout, At:  
Dhiha Sahi, Shankarpur, Cuttack
2. The Respondent: ITO, Ward -2(1),  
Cuttack
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT, Cuttack
5. DR, ITAT,
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**