

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1081/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2017-18

M/s.Sonny Fireworks Pvt. Ltd., 12A/1C, West Street, Thiruthangal-626 123.	v.	The DCIT, Corporate Circle-2, Madurai.
[PAN: AADCS 3010 J]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri Rajeshwaran, CA
प्रत्यर्थी की ओर से /Respondent by	:	Shri R. Clement Ramesh- Kumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	02.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	12.07.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short 'the Ld.CIT(A)'), Delhi, dated 13.02.2024 for the Assessment Year (hereinafter in short 'AY') 2017-18.

2. The main grievance of the assessee is against the action of the Ld.CIT(A) confirming the addition of Rs.3,09,37,567/- u/s.68 of the Income Tax Act, 1961 (hereinafter in short 'the Act') regarding the



:: 2 ::

Specified Bank Notes (hereinafter in short 'SBN') deposited during demonetization period.

**3.** The brief facts of the case are that the assessee is a Private Limited Company engaged in the business of manufacture and sale of fireworks; and assessee filed its return of income (RoI) for AY 2017-18 on 09.03.2018 admitting total income of Rs.29,74,010/-, which was processed u/s.143(1) of the Act; and later, selected for complete scrutiny. The AO noted that during the year assessee had deposited SBNs of Rs.3,09,37,567/- after 08.11.2016 (demonetization period). So, the AO asked the assessee to explain the *nature and source* of the cash/SBN's deposited; and the assessee explained that the same/SBN's were received/deposited by his customers who had purchased the fireworks on-credit during the Diwali festival (i.e. on 30.10.2016 in the relevant year). Further, the assessee also filed the name/details of the customers and also filed the financials (P & L A/c, audited books, balance sheet and other details), from which, the AO acknowledged that assessee had furnished the details of 773 customers/cash depositors; but according to the AO since failed to submit the PAN of 379 depositors and didn't file complete address/e-mail IDs, explaining the source of the payment, he was pleased to hold that the SBN deposits to tune of Rs. Rs.3,09,37,567/- needs to be added u/s.68 of the Act because the Central Government has declared that the SBNs ceased to be legal tender w.e.f. 09<sup>th</sup> November, 2016 and



:: 3 ::

assessee's action of receiving the same cannot be accepted and he added the same to the income of the assessee. Thus, total assessed income was computed at Rs.3,39,11,577/- in place of the returned income of Rs.29,74,010/-.

**4.** Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the action of the AO on the same reasoning as given by the AO.

**5.** Aggrieved, the assessee is in appeal before this Tribunal.

**6.** We have heard both the parties and perused the material available on record. We note that the assessee is engaged in the business of manufacture and sale of fireworks, and had filed return of income offering Rs.29,74,010/-; and the AO noted that the assessee has deposited SBNs to the tune of Rs.3,09,37,567/- during the demonetization period, and asked the assessee to prove the *nature and source* of the same. Pursuant to which, assessee filed audited financials, P & L A/c, balance sheet of the relevant assessment year, as well as that of earlier assessment years & subsequent assessment years, and explained to the AO that the SBNs were trade receipts/sale receipts of fireworks/crackers sold during Diwali festival on 30.10.2016. It was brought to the notice of the AO with the aid of statistics that during Diwali Festival, assessee makes maximum sales and pointed out that in this relevant AY, Diwali Festival was



:: 4 ::

celebrated eight (8) days before the demonetization; and that assessee booked sales during that week [Diwali] was 42% of its total sale i.e. Rs.265.41 lakhs (*excluding Sales Tax*); and that assessee's credit sales in September, 2016 was Rs.72.12 lakhs (11%) and that assessee's credit sales April-August was Rs.216.77 lakhs which was 35%; and that assessee in the P & L A/c has shown Revenue from business to the tune of Rs.6,55,37,435/- and has shown profit before tax Rs.26,93,399/- and has returned income to the tune of Rs.29,74,010/-. Further, it is noted that the AO has not rejected the purchases, sales or audited books of accounts of the assessee; and it is not the allegation of the AO that assessee didn't had sufficient stock as on 31.10.2016 (Diwali day) for sale of firecrackers, whereas, we find that assessee had sufficient stock for making the sale in the last week of October, 2016; and it is noted that the AO has not disputed the return of income of Rs.29,74,010/- and it is not the case of the AO that assessee had any other source of income other than the business income from sale of firecrackers. Thus, it is noted that assessee's total sale of firecrackers during the year under consideration is to the tune of Rs.6,55,37,435/- which included the cash deposited/ sale of Rs.3,09,37,567/-. In other words, the profit derived from the total sales of Rs.6,55,37,435/- includes cash sales of Rs.3,09,37,567/-, which was shown as total income for the purpose of Income Tax and the assessee has paid taxes on the said income. And we note that assessee has been



:: 5 ::

regularly filing GST/VAT returns and has filed the relevant details before the AO. In the light of the discussion (supra), it can be safely inferred that the profits embedded in Rs.6,55,37,435/- has been accepted by the AO. However, the AO has made separate addition of Rs.3,09,37,567/- which has already been considered for the purpose of Income Tax by adding the entire cash/SBNs which was sales of Rs.3,09,37,567/- u/s.68 of the Act by alleging it to be unaccounted income of the assessee. It is settled position of law that when the assessee has given an explanation regarding source of the credit/currency, which is plausible/probable from prudent persons point of view, then, it cannot be rejected by the AO without having any material to rebut the plausible explanation given by assessee. The Hon'ble Supreme Court in the case of Sreelekha Banerjee & Ors. v. CIT reported in [1963] 49 ITR 112 (SC), observed that "*the department could not act unreasonably and reject that explanation to hold that it was income. If, however, the evidence was unconvincing then such rejection could be made. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof*". In the present case, the assessee has not only explained the source of SBNs deposited in the bank to the tune of Rs.3,09,37,567/- as cash sales of fireworks on-credit along with the overwhelming relevant evidences viz., names of 773 customers (*who deposited cash in assessee's account*) along with the amount of money deposited/credited by them; PAN details



:: 6 ::

of 394 persons and has filed 223 persons VAT/Sales tax numbers and given the details of 156 persons who were unregistered dealers, which we find from perusal of Page Nos.26-38 of the Paper Book. Thus, it is noted that assessee has placed before the AO the primary facts to prove the *nature and source* of SBNs, which has not been found by him to be incorrect or false. Therefore, the action of the AO to make addition u/s.68 of the Act, is not acceptable for the reasons stated (infra).

**7.** The AO has not found any infirmity in the details filed by assessee to prove the nature & source of SBN's (supra) rather it is noted that the AO had acknowledged that assessee had filed the names of 773 customers, but didn't enquire the veracity of the assessee's assertion that money/SBNs have been deposited by them in his bank account, instead he has only said that assessee didn't give the PAN details of 379 depositors [which means, the AO accepted that assessee has given the PAN details of 394 persons] and the AO was silent of the fact that assessee had furnished the VAT/Sales Tax number of 223 persons and the addresses of 156 unregistered dealers and complete address/email Ids of all customers. The AO didn't conduct any enquiry to ascertain the veracity of the nature and source of cash deposit furnished by the assessee i.e. names & amount deposited by 773 customers/dealers, which included relevant details of customers:-



:: 7 ::

- i) PAN details of 394 customers.
- ii) VAT/Sales Tax of customers numbering 223
- iii) Address of 156 unregistered dealers.

**8.** Thus, it is noted that the assessee has discharged his burden to prove the *nature and source* of the cash deposits during the demonetization period which was nothing but receipt from trade sale of firecrackers, which cannot be brushed aside by the AO on conjectures, surmises and assumptions. We note that the addition made by the AO to the tune of Rs.3,09,37,567/- u/s.68 of the Act cannot be legally sustained, because, the same has already been accounted as sales in the books of accounts of the assessee, and tantamount to double taxation of the same income which is against the basic fundamental principles of taxation.

**9.** It is true that u/s.68 of the Act, when the AO find any sum credited in the books of the assessee and no explanation was given by assessee about the nature and source thereof, or the explanation offered by the assessee is not in the opinion of the AO satisfactory, then the sums credited may be charged to Income Tax as the income of the assessee. In this case, we find that the source of deposit of SBNs has been explained by the assessee as trade receipts, credited out of ordinary business sale which in-turn has been credited into its bank account and the profit from the transaction has been duly included in the return of



:: 8 ::

income filed in the relevant assessment year. Therefore, no addition u/s.68 of the Act is plausible since it would tantamount to double taxation of the same income as held by the Hon'ble Gujarat High Court in the case of CIT v. Vishal Exports Overseas Ltd., (Tax Appeal No.2471 of 2009) [Gujarat High Court] and also the decision of the Hon'ble Delhi High Court in the case of CIT v. Kailash Jewellery House [Appeal No.613/2010] (Delhi High Court) (refer decision of ITAT Indore Bench in the case of DEWAS SOYA LTD, UJJAIN in ITA No 336/Jnd/2012).

**10.** Moreover, the assessee has filed the comparative details of the sales carried out in AY 2015-16, AY 2017-18 & AY 2018-19. (i.e. earlier two assessment years and subsequent assessment year). From a perusal of the same, we find that there is no abnormal deviation from its normal course of its business. We note from the *modus operandi* of the business of the assessee (sale of firecrackers) which are normally in cash; and that the assessee manufactures the firecrackers gives it mainly on credits to sub-dealers allover Tamil Nadu and other States, by taking advance from them, and the sub-dealers would later sell it and deposit the sales amount in the assessee's bank account. The details of cash deposits into bank in earlier and subsequent Financial Years reveals that there is no much deviation of cash sales and cash deposits when compared to earlier Financial Year and demonetization period. It is also not in dispute that in this line of business, the majority of the sales is in cash during festivals,



:: 9 ::

marriages, etc., and therefore, from the business model of the assessee and the trade practice, there is no doubt whatsoever 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, it is noted that the assessee has also regularly filing GST/VAT returns and there is also being no change or deviation in the VAT returns filed for the period i.e. before the announcement of demonetization. And note that the assessee also declared sales made in cash in their books of accounts and filed necessary return of income and paid tax of the said income. Moreover, we note that the assessee has also made cash deposits regularly before and during demonetization period and therefore, it is not a case of amount deposited in SBNs as come out of undisclosed source or under any circumstances only to change colour of the money. From the details filed by the assessee, it is evident that during the month of Diwali festival, assessee used to have the maximum sale made (on credit). From the analysis of earlier or subsequent years reveal that there is no significant change in the pattern of cash sales/cash collection and cash deposit during demonetization period. The AO is not disputing the claim of the assessee that the nature and source of the deposits were from sale of firecrackers to 773 customers whose details were furnished by the assessee. The AO has made addition towards cash deposits in SBNs after demonetization period only for the reason that assessee was



**:: 10 ::**

not eligible to transact or receive SBNs after demonetization as per the notification dated 08.11.2016 by Government of India and concluded since assessee has accepted the demonetized currency in violation of the said order, therefore, source explained by the assessee cannot be accepted. In other words, the AO never disputed the fact that the assessee has made sales in cash before the demonetization period and also realized amounts from debtors against cash sales made before the demonetization period.

**11.** The only reason given by the AO to make addition u/s.68 of the Act was that assessee could not have transacted/received SBNs during demonetization period and relies on the notification issued by the Government of India (supra). No doubt Specified Bank Notes of Rs.500/- & Rs.1,000/- 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 31<sup>st</sup> 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 31<sup>st</sup> December, 2016. Therefore, there is no clarity on how to deal with demonetized currency from the date of demonetization to 31<sup>st</sup> December, 2016. Therefore, under those



*:: 11 ::*

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.

**12.** We further, notes 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



*:: 12 ::*

etc. In this case, we have gone through the analysis furnished by the assessee in respect of total sales, cash sales realization 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 countenanced.

**13.** It is noted that the assessee has given all the financials for the earlier years and subsequent years and the chart supra shows that deposits of SBNs cannot be said to be comparatively suspicious. We also note from the financials filed by the assessee that assessee had enough stock of the fireworks to sale same to the customers on credit during the Diwali Festival i.e. 30.10.2016. Thus, we find that the assessee had sufficient stock as on 30.10.2016 (Diwali period) for sale of the goods which generated amount of Rs. Rs.3,09,37,567/- to be deposited during the demonetization period and there are no defects in the stock registers. Every purchase and sale matches with inflow and outflow of the stock and as assessee has placed on record that the purchased goods have already inflicted with VAT/Sales Tax and the AO has not found any infirmity in the books of accounts of the assessee. Therefore, on the basis of facts



ITA No.1081/Chny/2024 (AY 2017-18)  
M/s.Sonny Fireworks Pvt. Ltd.

:: 13 ::

discussed supra, we set aside the impugned order of the Ld.CIT(A) and direct the deletion of addition of Rs.3,09,37,567/-.

**14.** In the result, appeal filed by the assessee is allowed.

Order pronounced on the 12<sup>th</sup> day of July, 2024, in Chennai.

**Sd/-**

(अमिताभ शुक्ला)

**(AMITABH SHUKLA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(एबी टी. वर्की)

**(ABY T. VARKEY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 12<sup>th</sup> July, 2024.

**TLN, Sr.PS**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF