IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No.277/Ahd/2022
(Assessment Year: 2017-18)

Shri Umiya Cooperative Credit Society Ltd., 1, Senetary Road, Kutchhi Patidar Vadi, Petlad Tal. Petlad Dist. Anand, Gujarat-388450	Vs.	Income Tax Officer Ward-1(3)(1), Petlad
[PAN No.AABTS2341H]		
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri S. N. Divatia, A.R.
Respondent by:	Ms. Saumya Pandey Jain, Sr. DR

Date of Hearing	23.04.2024
Date of Pronouncement	18.07.2024

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short "Ld. CIT(A)"), National Faceless Appeal Centre (in short "NFAC"), Delhi vide order dated 27.05.2022 for Assessment Year 2017-18.

2. The Assessee has taken the following grounds of appeal:-

"1. The Commissioner of Income Tax (Appeals) erred on facts and in law in treating the interest earned on Term Deposits with Nationalized Banks as income from other sources and disallowed deduction of Rs. 2,06,392/- eligible to the appellant u/s 80P. The appellant prays that the disallowance made in respect of deduction claimed u/s 80P(2)(a)(i) be deleted.

2. The Commissioner of Income Tax (Appeals) erred on facts without appreciating the circumstances of the case and in Law in holding that cash deposits of Rs.1,15,97,500/- in the bank account during demonetization period as unexplained cash credit u/s. 68 is wholly illegal, unlawful and against the principles of natural justice. The appellant prays that the addition of Rs. 1,15,97,500/- made in respect of cash deposited by the appellant be deleted.

3. The Commissioner of Income Tax (Appeals) has grievously erred in law and on facts in not considering fully and properly the explanations furnished and the evidences produced by the appellant. The Commissioner of Income Tax (Appeals) erred in law in not providing adequate opportunity of being heard in the appellate proceedings before him and passed appellate order which is not in accordance with principles of natural justice. The appellant prays that direction may be given to provide the appellant sufficient opportunity to file its submissions and the appellant may be allowed to produce additional evidences as per Rule 46A.

4. The Commissioner of Income Tax (Appeals) has grievously erred in law and on facts in charging tax of Rs. 63,85,500/- u/s 115BBE in respect of addition of Rs. 1,06,47,500/- made as unexplained cash credit u/s 68 of the I.T. Act. The appellant prays to delete the tax of Rs. 63,88,500/- charged u/s 115BBe.

5. Your appellant craves leave to add, amend, alter, vary and / or withdraw any or all of the above grounds of appeal in the course of appellate proceedings."

3. The brief facts of the case are that the assessee filed it's return of income on 14.03.2018 declaring total income at Rs. NIL after claiming deduction under chapter VI-A of the Act. The case of the assessee was selected for scrutiny under CASS. The issues for examination were low income in comparison to high advances / investments and large deduction under chapter VI-A of the Act and cash deposits made during demonetization period. The assessee submitted that it is a cooperative society and business income is exempted as per the provision of Section 80P of the Act. Further, the assessee submitted the details of the loans / advances made to various parties such as members, other banks etc. On perusal of the details, the Assessing Officer observed that the assessee has received interest income of Rs. 9,67,392/- from parties other than members or other cooperative societies. Accordingly, the Assessing Officer was of the view that the interest is not eligible for deduction under the provisions of Section 80P of the Act. The Assessing Officer was of the view that such interest income comes in the category of "income from other sources" and is taxable under Section 56 of the Act and cannot be said to be attributable to the activities of the society, namely, carrying on the business of providing

credit facilities to it's members. However, the Assessing Officer agreed to the contention of the assessee regarding allowability of pro-rata expenses. The Assessing Officer observed that during the year under consideration, as per Profit & Loss Account, the gross receipts were shown at Rs. 83,68,911/- and against the same, the assessee claimed total expenses amounting to Rs. 65,83,704/-. Accordingly, the pro-rata expenses for the receipt of Rs. 9,67,392/- comes to Rs. 7,61,000/- (65,83,704/83,68,911*9,67,392). Therefore, the Assessing Officer added the remaining interest to Rs. 2,06,392/- received from nationalized banks to the total income of the assessee under the head "income from other sources".

4. Further, during the course of assessment proceedings, the Assessing Officer observed that the assessee has deposited cash in Specified Bank Notes (SBN) of Rs. 1,06,47,500/- during the demonetization period from 10.11.2016 to 14.11.2016. On being asked, the assessee submitted that the said amount was received on account of recovery of loans from it's members from 10.11.2016 to 14.11.2016. In this connection, the assessee's contention was the cash deposited in SBNs in the bank accounts was from repayment of loan by the members of the assessee society during the demonetization period. However, the Assessing Officer did not accept the contention of the assessee on the ground that after demonetization, SBN notes could neither been given nor accepted as legal tender by the assessee. The Assessing Officer was of the view that the assessee is a cooperative credit society and is not a bank and it was never allowed to accept SBN during the demonetization period. The assessee could not provide any document that it was allowed to accept SBN during demonetization period

and post announcing of demonetization, the SBN was no longer a legal tender. The Assessing Officer was of the view that the RBI had issued clear guidelines with regard to the entities / institutions which were allowed to accept SBN currency and cooperative credit society were not one of them. The Assessing Officer held that the contention of the assessee that it was under genuine belief that SBN currency can be accepted during the demonetization period and the claim of the assessee that it had received the aforesaid amount as repayment of loan, was not held to be genuine. The Assessing Officer was of the view that the cash received by the assessee from SBN was from unexplained sources and therefore, the Assessing Officer made addition of Rs. 1,06,47,500/- as unexplained cash credit under Section 68 of the Act.

5. The assessee field appeal before Ld. CIT(A) which was dismissed by the Ld. CIT(A) on account of non-prosecution. While dismissing the appeal of the assessee the Ld. CIT(A) made the following observations:

> *"Despite repeated notices as delineated above, the appellant has not seen it fit to file any submissions, information or documents during appeal proceedings. The only material on record in this case is Form 35 filed by appellant and copy of assessment order dated 24.12.2019 filed by the appellant along with Form 35. The material on record has been carefully perused. The additions on various counts have been dealt with cogently by the AO in his aforesaid order.*
>
> *There is no material on record to warrant interference in the order of the AO.*
>
> *In view of the fact lhat there is no material on record to warrant interference in the order of the AO, the Grounds of Appeal are hereby* ***dismissed.***
>
> *5. As a result, the appeal is* ***dismissed.****"*

6. The assessee is in appeal before us against the aforesaid additions made by the Assessing Officer, which were later confirmed by the Ld. CIT(A).

Ground No. 1:- Disallowance of deduction of Rs. 2,06,392/- under Section 80P of the Act.

7. Before us, the Counsel for the assessee submitted that as per reply dated 22.07.2019 submitted before the Assessing Officer, the assessee had received interest income of Rs. 10,34,273/- from corporation bank as per break-up at Page 32 of the Paper Book. The assessee had worked out proportionate expenses at Rs. 9,67,392/- and the net income was worked out at Rs. 66,881/-. On the other hand, the Assessing Officer has incorrectly worked out the net interest income at Rs. 2,06,392/-. The Counsel for the assessee has produced chart / table before us in which the Counsel for the assessee submitted that the Assessing Officer has incorrectly worked out the proportionate expenses at Rs. 7,61,000/- as against the actual expenses at Rs. 9,67,392/-. Therefore, the net disallowance should have been Rs. 66,881/- as against the addition / disallowance of Rs. 2,06,392/-, made by the Assessing Officer which is not justified.

8. We have gone through the submissions filed by the assessee. On going through the same, we are of the considered view, that in the interest of justice, this issue may be restored back to the file of the Assessing Officer for carrying out the necessary verification and to ascertain whether the details of proportionate expenses furnished by the assessee are in order.

9. In the result, Ground No. 1 of the assessee's appeal is allowed for statistical purposes.

Ground No.2:- Addition of Rs. 1,06,47,500/- under Section 68 of the Act.

10. This ground relates to addition of Rs. 1,06,47,500/- on account of acceptance by the assessee of SBN currency during the demonetization period, which were added to the income of the assessee under Section 68 of the Act. Before us, the Counsel for the assessee submitted that it is an admitted position that the assessee is a society engaged exclusively in accepting deposits from it's members and providing credit to them. The Counsel for the assessee submitted that the assessee had accepted SBN from it's members under the genuine and bona fide belief that the assessee was permitted to do so and this amount was later deposited by the assessee in the bank. Accordingly, total sum of Rs. 1,06,47,500/- was deposited by the assessee in the bank during the period 10.11.2016 to 14.11.2016 as against cash received in SBN from it's members of Rs. 1,16,80,348/-. The Counsel for the assessee submitted that subsequently, the RBI had clarified on 14.11.2016 that District Central Cooperative Banks are not permitted to provide exchange facility against the Specified Bank Notes (Rs. 500/- and Rs. 1000/- notes) and nor the deposit of such notes should be entertained by such District Central Cooperative Banks. Accordingly, the Counsel for the assessee submitted that as soon as the RBI came out with this clarification, the assessee immediately stopped accepting SBN from it's members after 14.11.2016. Therefore, such acceptance of SBNs from it's members by way of loan repayment was stopped by the assessee immediately upon issuance

of clarification by the RBI on 14.11.2016. Therefore, the first contention of the Counsel for the assessee before us that such acceptance of SBNs was under a genuine and bona fide belief that the assessee society could accept such SBN from it's members. Secondly, the Counsel for the assessee submitted that the assessee society had furnished complete list of all cash credit accounts holders from whom the said cash was received towards recovery of loan (at Pages 76-104 of the Paper Book). The Counsel for the assessee submitted that the chart showing the name, address, PAN and Account Number of the said members of the assessee society from whom cash was received in SBN towards repayment of loan had been duly submitted before the Assessing Officer (Page 116-117 of the Paper Book). Therefore, the assessee society had accommodated / assisted it's members by accepting the money by towards settlement of loan given to them, in exchange of SBN, and thereafter, this money was subsequently deposited in the bank account. It was submitted before us that no benefit had accrued to the assessee from depositing of SBN currency notes and that the assessee had merely acted as an intermediary in depositing old currency which ceased to be accepted as legal tender. The Assessing Officer failed to appreciate that the members of the society to whom credit facilities were provided reside in remote and interior places of villages and most of them are illiterate or carrying on small business like sawing of wood. Hence, instead of carrying cash from their respective village, the society came to the rescue of it's members and accepted SBN towards repayment of loan which earlier granted to them. Thus, this assessee society has not got anything out of accepting SBN notes during the demonetization period. The Counsel for the assessee submitted before us was that no addition could

have been made under Section 68 of the Act since the assessee has discharged the onus to prove the cash credits by providing the identity of the parties, substantiating the genuineness of the transaction and also giving proof of creditworthiness of parties. In the present case, the Assessing Officer has not disputed the particulars of members furnished before the assessee society in the chart furnished by the Assessing Officer relating to the deposit holders during the assessment proceedings (Page 116-117 of the Paper Book).

11. In response, the Ld. D.R. submitted that it is a well accepted fact that once the SBNs have been declared by the RBI to be a non-legal tender, then acceptance of SBNs from it's members was clearly in gross-violation of law. Post announcement of demonetization, the assessee could not have accepted SBN towards repayment of loan given to it's members. Therefore, acceptance of such SBN during demonetization period was in gross-violation of law and accordingly, the Ld. CIT(A) has not erred in facts and in law in confirming the addition made by the Assessing Officer under Section 68 of the Act.

12. We have heard the rival contentions and perused the material on record.

13. First of all, we note that the contention of the assessee that it was under genuine and bona fide belief that it was permitted to accept SBN during demonetization period cannot be accepted. Therefore, we are unable to accept the contention of the assessee that the assessee was under a genuine and bona fide belief that the assessee could accept SBN post

announcement of demonetization towards settlement of loan granted / advanced by the assessee to it's members. However, the issue for consideration before us is that whether acceptance of such SBN during the demonetization period could lead to making of addition under Section 68 of the Act. It would be useful to reproduce the relevant extract of the Section 68 of the Act for ready reference:

> *"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."*

14. In the instant facts, the assessee has submitted before the Assessing Officer that it was engaged in the business of providing credit facilities to it's members, most of whom were small businessman residing in remote areas. When the demonetization was announced, the assessee extended a facility / assistance to it's members whereby, the assessee society offered to accept SBN from it's members towards settlement of the loan which had earlier been extended to them before the demonetization period. Thereafter, the assessee upon having accepted the SBN from it's members, deposited the same in the bank account held by the assessee. The assessee had also furnished complete details of it's members including their names, PAN, address etc. The assessee had also given a specific explanation that this amount received by the assessee society from it's members was only towards settlement of debt / loan which had earlier been given by the assessee society to it's members. Further, once the assessee had furnished complete details of it's members from whom cash had been received by way of SBN towards settlement of debt, it was open to the Assessing

Officer to issue notice to various parties and verify the details furnished by the assessee, in case the Assessing Officer doubted the genuineness of the list of parties provided by the assessee. However, no such exercise was carried out by the Assessing Officer. Therefore, in our considered view so far as applicability of Section 68 of the Act is concerned, no addition is called for in the hands of the assessee since the assessee has been given a plausible explanation regarding the source of SBNs received by the assessee society during the demonetization, as settlement of debt / loan extended to it's members during the pre-demonetization period. Further, the assessee had given complete list of persons from whom SBN were accepted including their name, address, PAN No. etc. The details of parties submitted by the assessee has not been doubted by the Assessing Officer. Accordingly, looking into the language of Section 68 of the Act, we are of the considered view that no addition is called for under Section 68 of the Act. This view also find support from the decision of **ITO vs. CD Patani Nagri Sahkari Pat Sanstha in ITA No. 727/Pun/2022 vide order dated 28.03.2023**, in which the ITAT on similar set of facts made the following observations:-

> *"4. We have heard both the parties and perused the records. It is observed that assessee is a Co-operative Credit Society engaged in the business of providing credit facilities and accepting deposits from its members. It is registered under section 9 of the Maharashtra Cooperative Societies Act. The Assessing Officer(AO) in the assessment order observed that assessee has deposited Rs.1,21,99,435/- in the form of banned currency notes during demonetization period. These deposits were accepted by the assessee after 08.11.2016. The assessee provided detailed list of customers from whom such banned currency notes were accepted as deposits and these were duly credited to those customers accounts. The assessee submitted during assessment proceedings that identity of persons and nature of deposits were duly explained and all relevant records were filed, hence, section 68 was not applicable in assessee's case. However, the AO added Rs.1,21,99,435/- under section 68 of the Act as unexplained cash credits.* ***There is no dispute that assessee provided list of customers who had deposited banned currency into the account. There is no***

dispute that all those persons were members of the assessee society. Once the assessee has filed all the relevant details regarding the depositors, the onus shifts on the revenue. The AO has not carried out any independent inquiries and merely added the amounts u/s 68. *ITAT Pune Bench in ITA No.561/PUN/2022 for A.Y. 2017-18 dated 03.01.2023 has held in identical facts as under :*

> *"4. I have heard the rival submissions and perused the relevant material on record. It is seen that the assessee is a Urban Cooperative Credit Society which received Rs.1,78,400/- from 15 depositors whose all the necessary particulars have been given. The list comprises receipt of Rs.85,970/- from 3 small saving agents and Rs.94,000/- from 12 customers. The assessee furnished necessary details in respect of the depositors. The AO refused to accept the genuineness of the transaction and made the addition u/s.68 of the Act. The ld. AR has brought to my notice an order passed by the Bangalore Bench of the Tribunal in Prathamika Krushi Pattina Sahakari Sangha Niyamitha Itagi Pkpssn (ITA No.593/Bang/2021) dt. 01-06-2022 in which the addition made under similar circumstances has been deleted. In this order, the Tribunal relied on another order in Bhageeratha Pattina Sahakara Sangha Niyamitha Vs. ITO – ITA No.646/Bang/2021 dt. 18-02-2022, that has been referred to in para 5 of the order. No contrary order on such facts, in favour of the Revenue, has been brought on record by the ld. DR. Respectfully following the precedent, I overturn the impugned order and direct to delete the addition of Rs.1,78,500/- sustained in the first appeal."*

5. Respectfully following the decision of ITAT Pune Bench in the case of M/s.Bhagur Urban Credit Co-operative Society Ltd., in ITA No.561/PUN/2022, it is held that addition made by AO under section 68 are not maintainable. Accordingly, AO is directed to delete the addition of Rs.1,21,99,435/-. Thus, grounds of appeal raised by the Revenue are dismissed."

15. Further, in the case of **Merchants Credit Co-operative Society Ltd. vs. ITO in ITA No. 329/Bang/2023 vide order dated 24.08.2023** on similar set of facts, ITAT again held that no addition is called for under Section 68 of the Act on account of acceptance of SBN. The ITAT made the following observations while allowing the appeal of the assessee on similar set of facts:

> *"7. We have considered the rival submissions. The assessee is a credit co-operative society dealing with the members only. During the demonetisation period the members of the society have deposited cash in pygmie a/c, SB A/c, loan a/c. etc. The assessee has produced a list of depositors and the amount deposited by members with denominations of currency. The assessee has accepted the deposits from its members*

from 9.11.2016 to 14.11.2016. As per Gazette Notification of RBI & Govt. of India dated 08.11.2016, the assessee was not authorized to accept cash deposits in SBNs. The AO observed that the assessee was not authorized to receive or collect money in SBNs of Rs.1,000 and Rs.500 which were not in legal tender w.e.f. 09.11.2016 and such transactions on or after 09.11.2016 cannot be entered in cash book. The cash deposits made by the members of the society had no value as such. The Assessing Officer issued show-cause notice by observing that the impugned amount should be treated as income of the assessee u/s 69A of the Act., however the AO made addition u/s 68 of the I.T. Act. The assessee has satisfied the requirement of section 69A of the Act and the AO did not give further opportunity to the assessee for addition u/s 68 of the I. T. Act. ***During the assessment proceedings, assessee filed the details of list of depositors and loanees who made cash deposits. The AO accepted that it was money deposited by the members and noted that the assessee had brought the entries in its books of account, therefore section 68 will apply and accordingly treated it as income u/s. 68. There is no doubt that the assessee has satisfied the identity of the deposits, who are members of the society and genuineness of the transactions because the amounts have been deposited in the members accounts only. If the AO had any doubts that the assessee has not satisfied the ingredients of section 68, he could have asked further details from the assessee, but the AO has not done the same, which clearly shows that the assessee has discharged its duty to satisfy the requirement of section 68. We further note that the SBNs have been deposited in the members accounts, accordingly, the assessee did not get any extra benefit as observed by the AO in his order at para No. 06 which was treated as income us 69A of the Act. In view of this, the provisions of section 68 is not applicable in the present facts of the case and the AO without discussing in detail has made addition u/s. 68 which is not proper. Therefore the addition is deleted.***

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

16. Again in the case of **Saidatar Co-operative Credit Society Ltd. vs. ITO in ITA No. 1613/Mum/2021 vide order dated 05.09.2022**, the ITAT again on similar set of facts allowing the appeal of the assessee on this issue with the following observations:

"9. Thus, provisions of section 69A of the Act are applicable only in the case where the assessee is found to be the owner of any money, bullion, jewellery or other valuable article. In the present case, it is an accepted fact that assessee is a Co-operative Credit Society and in its business it accepts deposits from its members and also gives credit to its members which is repaid by them. The cash/money deposited by its members is further deposited by the Society in its bank account. Thus, in the facts of the present case, the assessee who is a registered Co-operative Credit Society cannot be considered to be the owner of the money, which only belongs to its members and same is retained by the assessee as its custodian. ***Further, from the perusal of the record we find that the assessee provided the details of cash deposited during the demonetisation period before the Assessing Officer in reply to the notices issued. From such reply filed by the assessee, forming part of the paper book, we find that assessee***

> ***also provided name and address of the members who have deposited cash with the assessee during the year under consideration. The assessee has also provided the PAN number of some of its members. However, the Assessing Officer without commenting upon any of these details added the cash deposit made during the period of demonetisation as undisclosed income of the assessee.*** *We find that though Assessing Officer has issued notice under section 133(6) of the Act to the bank seeking information regarding the details of bank statement and KYC details of the assessee, however, neither such notice under section 133(6) was issued nor examination/enquiry was done from the members. During the hearing before us, the assessee also submitted the list of members along with their PAN/TIN No.* ***who had deposited cash during the demonetisation period in old currency notes. Be that as it may, since this money is of the members of the assessee society and the same is not owned by the assessee society, therefore, we are of the considered view that Assessing Officer has wrongly made the addition under section 69A of the Act, in respect of the cash deposit made during the demonetisation period.****"*

17. Accordingly, looking into the facts of the instant case, the observations made by us in the preceding paragraphs and the judicial precedents on the subject, we are of the considered view no addition is called for under Section 68 of the Act.

18. In the result, Ground No. 2 of the assessee's appeal is allowed.

19. Other grounds of appeal raised by the assessee are general / consequential in nature and are hereby not dealing with them separately.

20. In the result, the appeal of the assessee is partly allowed for statistical purposes.

This Order pronounced in Open Court on	**18/07/2024**

Sd/-	**Sd/-**
(ANNAPURNA GUPTA)	**(SIDDHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 18/07/2024
TANMAY, Sr. PS ***TRUE COPY***

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad