

आयकर अपीलीय अधिकरण  
कोलकाता 'एसएमसी' पीठ, कोलकाता में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA

श्री राजेश कुमार, लेखा सदस्य  
एवं  
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
के समक्ष

Before

SRI RAJESH KUMAR, ACCOUNTANT MEMBER  
&  
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

I.T.A. No.: 276/KOL/2024  
Assessment Year: 2017-18

*Debraj Sahoo*.....*Appellant*  
[PAN: BYMPS 8715 F]

Vs.

*DCIT, Cir.-44, Kolkata*.....*Respondent*

**Appearances:**

**Assessee represented by:** Akash Bansal, FCA.

**Department represented by:** Nicholash Murud, Addl. CIT, DR.

Date of concluding the hearing : July 8<sup>th</sup>, 2024

Date of pronouncing the order : August 8<sup>th</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 29.12.2023 arising out of the assessment order framed u/s 143(3) of the Act dated 18.12.2019.

1.1. The brief facts of the case of the appellant are that the assessee is engage in the business of fabrication and trading of mattress corresponding purchases are directly from single manufacturer i.e. M/s. Supreme Industries

Ltd. It is alleged that during the first year of trading business majority of the appellant's sale was mainly in cash as against credit sales. The appellant filed its return of income on 07.11.2017 declaring total income of Rs. 3,32,220/-. The case of the appellant was selected for scrutiny and the Assessing Officer (hereinafter referred to as ld. 'AO') observed that appellant deposited cash of Rs. 32,42,500/- in his State Bank of India Bank account and Rs. 7,10,500/- in his Yes Bank account during the demonetization period. The ld. AO asked for the documentary evidences with respect to the deposit of the amount during the demonetization period from the assessee but in his finding the ld. AO has held that in the absence of any evidence for receipts and deposits made, the amount of Rs. 32,42,500/- has been declared as unexplained income chargeable to tax u/s 68 of the Act. The assessee has preferred an appeal before the ld. CIT(A) wherein his appeal has been partly allowed. It has been held by the ld. CIT(A) that out of total bank deposits during the demonetization period of Rs. 39,52,500/- a deposit of Rs. 3,35,708/- is held to be explained only. Being aggrieved and dissatisfied with the impugned order, the assessee has preferred the present appeal.

1.2. Ld. Counsel for the assessee challenges the impugned order of the ld. CIT(A) thereby submitting that the ld. CIT(A) has erred in granting relief of only Rs. 3,35,708/- to the appellant ignoring the documents/explanation offered by the assessee. Ld. Counsel for the assessee submits that since the appellant was new into this trading business, the credibility of customers was not known. Therefore, the appellant used to sell their goods in cash to the reduced credit risk and saving interest cost. He has submitted that there was cash deposit in bank account not only during the demonetization period i.e. from 08.11.2016 to 30.12.2016 but even before and after also. He has filed bank statement during the FY 2016-17 and also filed the bank statement of State Bank of India of FY 2017-18 and 2018-19 to establish that amount of cash deposited before demonetization period was Rs. 85,000/- and after demonetization period up to 31.03.2017 was Rs. 1,06,48,000/-. The ld. Counsel for the assessee further submits that the Assessing Officer (hereinafter referred to as ld. 'AO') without giving cognizance to the details

submitted by the appellant and with a pre-determined mind-set added the entire cash deposit in the bank account as unexplained cash credit. While making an addition the AO has accepted the accounts of the appellant along with the sales declared in the profit and loss. The ld. Counsel for the assessee cited the decisions which are as under:

- a) *Lateef Abdul Mohd. -vs.- ITO (2022) 65 CCH 175 (Hyd-ITAT) [ITA No. 501/Hyd/2021]*
- b) *Purani Hospital Supplies Pvt. Ltd. -vs.- DCIT (2023) 68 CCH 121 (Chennai-ITAT) [ITA No. 489/Chny/2022]*
- c) *Pr. CIT -vs.- Agson Global Pvt. Ltd. & Ors. (2022) 441 ITR 550 (Del-HC)*
- d) *DCIT -vs.- Bawa Jewellers Pvt. Ltd. (Del-ITAT) [ITA No. 352/Del/2021 |*
- e) *DCIT -vs.- Kundan Jewellers Pvt Ltd (Mum-ITAT) [ITA No, 1035/Mum/2022]*
- f) *Ashok Kumar Singh -vs.- ITO (2019) 56 CCH 320 (Del-ITAT) [ITA No. 6036/Del/2018]*
- g) *ITO -vs.- Devender Jeet Singh Kier (2017) 51 CCH 487 (Kol-ITAT) [ITA No. 1185/Kol/2014]*
- h) *Vipin Aggarwal -vs.- ITO (2019) 55 CCH 154 (Del-ITAT) [ITA.No.2571/Del/2018]*

1.3. Contrary to that ld. D/R has supported the order of the ld. CIT(A).

2. After hearing the submissions of the Counsels of the respective parties, we have perused the order as well as the documents filed by the assessee. While we perused the paper book filed by the assessee, we find that the assessee has filed the following documentary evidences in support of the deposits of the money during the demonetization period which is as follows:

- a) Bank statement of State Bank of India for the FY 2016-17
- b) Copy of audited financial statement for the FY 2016-17
- c) Copy of tax audit report for the AY 2017-18
- d) Bank statement of State Bank of India for the FY 2017-18

e) Bank statement of State Bank of India for the FY 2018-19

f) Bank statement of Yes Bank for the FY 2016-17 & 2017-18

g) Cash book for the FY 2016-17 and the cash for the FY 2017-18

2.1. As per the case of the assessee that appellant was new into the trading business therefore, the appellant used to sell their goods in cash to reduce credit risk and saving the interest cost. On perusal of the copy of the bank statement we find that there has been a cash deposit in bank accounts not only during the demonetization period but even before and after also. We find that amount of cash deposited before demonetization period was Rs. 7,85,000/- and after demonetization period up to 31.03.2017 was Rs. 1,06,48,000/-. All the details which have been stated as above have been brought to the notice of the AO by the assessee vide letter dated 26.09.2019, 15.10.2019 & 18.11.2019. On perusal of the above documentary evidences, we find that appellant has furnished the source and documentary evidences with respect to cash deposit during the demonetization period.

2.2. It was further submitted that the appellant has explained the nature as well as sources of cash deposits, i.e. said cash deposit was made out of sales in the ordinary course of carrying on business. Accordingly, the appellant has duly discharged his responsibility under section 68 of the Act. Further, the collections and deposits have duly been recorded in the books of account and hence, there is no reason to treat the same as unexplained cash credit of the appellant. Merely because demonetized notes collected after 08.11.2016, does not mean that the amount collected by the appellant against sales and duly recorded in books of account, would become unexplained cash credit under only due to contravention of the notification issued by RBI. Now, relevant portions from the cited decisions are reproduced here for reference:

A) Hon'ble Bangalore ITAT in the case of *Sri Bhageeratha Pattina Sahakara Sangha Niyamitha -vs.- ITO [ITA No. 646/Bang/2021]*, has held that:

*“The case of the A.O is that the assessee has collected the demonetized notes after 8.11.2016 in violation of the notifications issued by RBI.*

*Accordingly, he has taken the view that the above said amounts represents unexplained money of the assessee. I am unable to understand the rationale in the view taken by A.O. I noticed that the AO has invoked the provisions of sec. 68 of the Act for making this addition. I also noticed that the assessee has also complied with the requirements of sec. 68 of the Act. The AO has also not stated that the assessee has not discharged the responsibility placed on it u/s 68 of the Act. Peculiarly, the AO is taking the view that the assessee was not entitled to collect the demonized notes and accordingly invoked sec. 68 of the Act. I am unable to understand as to how the contraventions, if any, of the notification issued by RBI would attract the provisions of sec. 68 of the Income tax Act.”*

*[Emphasis Added]*

B) Hon'ble Jaipur ITAT in the case of *ACIT -vs.- Shri Chandra Surana* [ITA No. 166/JP/2022], has held that:

*“It is also observed from the assessment order that the AO had not rejected the books of account of the assessee as no contrary material was available with him to reject the books of account of the assessee. As regards the addition of Rs.2,90,93,500/- made by the AO by applying the provisions of Section 68 of the Act, it is noted that provisions of Section 68 are not applicable on the sale transactions recorded in the books of accounts as sales are already part of the income which is already credited in P&L account. Hence, there is no occasion to consider the same as income of the assessee by invoking the provisions of Section 68 of the Act. In view of the above deliberations and case laws relied upon by both the parties, we find that the AO was not justified in making an addition of Rs.2,90,93,500/- u/s 68 of the Act which has rightly been deleted the Id. CIT(A) and we concur with his findings.”*

*[Emphasis Added]*

C) Hon'ble Chennai ITAT in the case of *Micky Fireworks Industries -vs.- ACIT* [ITA No. 264/Chny/2023], has held that:

*“We find that the only reasoning to treat the said deposits as unexplained cash credit u/s 68 is that the assessee was debarred from dealing in SBN after 08-11-2016. However, in the present case, the cash so received by the assessee is backed by sales carried out by the assessee as recorded in the books of accounts. Therefore, the source of cash is duly explained. The provisions of Sec. 68 could be invoked only in cases when there was unexplained cash credit in the books of accounts maintained by the assessee. However, the assessee has duly identified the debtors from whom the cash was received and the same could not be disputed by lower authorities. The PAN of respective debtors as well as quantum of cash realized from each of them has duly been detailed by the assessee before*

*Ld. AO during assessment proceedings. No defect has been pointed out in the books of accounts. In such a case, the credit could not be held to be unexplained cash credit and the impugned additions are not sustainable in law.”*

*[Emphasis Added]*

D) Hon'ble Bangalore ITAT in the case of *Anantpur Kalpana -vs.- ITO [ITA No. 541/Bang/2021]*, has held that:

*“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 tire assessee. Tire addition has been made only on tire basis that after demonetization, tire demonetized notes could not have been accepted as valid tender. Since tire sale proceeds for which cash was received from tire customers was already admitted as income and if tire 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 tire principles of taxation. It is also on record that tire assessee was having only one source of income from trading in beedi, tea power and pan masala and therefore provisions of section 115BBE of tire Act will have no application so as to treat tire income of tire assessee as income from other sources. Hon'ble Kolkata Tribunal in tire case of CIT Vs. Associated Transport Pvt. Ltd. reported in 84 Taxman 146 on identical facts took tire view that when cash sales are admitted and income from sales are declared as income, wherein tire Hon'ble Tribunal found that tire assessee had sufficient cash in hand in tire books of account of tire assessee, that there was no reason to treat tire cash deposits as income from undisclosed sources. Tire Hon'ble Vishakapatnam Tribunal in tire case of ACIT Vs. Hirapanna Jewelers in ITA No. 253/Viz/2020 on identical facts held that when cash receipts represent tire sales which tire assessee has offered for taxation and when trading account shows sufficient stock to effect the sales and when no defects are pointed out in tire books of account, it was held that when Assessee already admitted tire sales as revenue receipt, there is no case for making tire addition u/s 68 or tax tire same u/s 115BBE again. I am of tire view that in tire light of tire facts and circumstances of tire present case, tire addition made is not sustainable and tire same is directed to be deleted.”*

*[Emphasis Added]*

2.3. The present case in hand is that appellant has explained the nature as well as sources of cash deposit that is the said cash deposits were made out of sales in ordinary course of carrying on business. Accordingly, we are in this view that the appellant has duly discharged its responsibility u/s 68 of the

Act. Further, we find that collection in deposits has duly been recorded in the books of accounts. Hence, there is no reason to treat the same as unexplained cash credit/unexplained money. We find force in the argument of the Id. Counsel for the assessee that merely due to the contravention of the notification issued by RBI does not mean that the amount collected by the appellant against sales and duly recorded in the books of accounts treated as unexplained cash credit of the appellant.

3. Keeping in view the entire facts of the case as well as documents filed by the assessee in support and judicial pronouncement of the ITAT as discussed above, we are of this view that appellant has been able to succeeded in establishing his case and accordingly, the order of the Id. CIT(A) with regard to the unexplained money is hereby set aside and the appeal of the assessee is hereby allowed.

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

**Order pronounced in the open Court on 8<sup>th</sup> August, 2024.**

Sd/-

**[Rajesh Kumar]**

Accountant Member

Sd/-

**[Pradip Kumar Choubey]**

Judicial Member

Dated: 08.08.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Debraj Sahoo, 33, Bhupen Bose Avenue, Shyambazar, Kolkata, West Bengal, 700004.**
2. **DCIT, Cir.-44, Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata