

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.912/Bang/2024
Assessment year : 2017-18

Chetana Financial Services Private Limited, 2 nd Floor, CTS 3341/26, Navachetana Heights, 1 st Cross, Ashwini Nagar, Haveri – 581 110. PAN : AAFCC 1523L	Vs.	The Assistant Commissioner of Income Tax, Circle 1, Davangere.
APPELLANT		RESPONDENT

Appellant by	:	Shri Varun Bhat, CA
Respondent by	:	Shri V. Parithivel, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	29.07.2024
Date of Pronouncement	:	21.08.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 22.03.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18.

2. Briefly stated the facts of the case are that assessee is a private limited Non-Banking Financial Company (NBFC) engaged in the business of micro finance having head office at Haveri. It provided

joint liability group loan with collateral to rural, urban and semi-urban household and mainly concentrates its business in city talukas and remote villages wherein banking facilities are bleak. The assessee filed return of income on 01.11.2017 declaring total income at Rs.43,94,580. The case was selected for scrutiny and statutory notices issued to the assessee regarding verification of cash deposits during the demonetization period. The assessee filed details. From the documents, it was noticed that assessee has deposited cash during the demonetization period. However assessee being micro finance company has accepted demonetized notes for which Gazette Notification No.2652 dated 8.11.2016 was issued by Govt. of India/RBI regarding existing series of demonetized notes of Rs.500 & 1,000 upto 08.11.2016 shall cease to be legal tender w.e.f. 09.11.2016. However assessee has accepted Specified Bank Notes (SBNs) from 09.11.2016 to 31.12.2016 of Rs.27,37,957. The AO noted that the assessee was unable to satisfied the ingredients of section 68 of the Income Tax Act. In this regard, the AO applied section 68 and added into total income and applied tax rate as per section 115BBE of the Act. Accordingly assessed income was determined at Rs.75,49,764.

3. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA). During the first appeal proceedings, the assessee filed written submissions which has been incorporated in the FAA's order. However, after considering the detailed submissions, the ld. FAA dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before the ITAT.

4. The Id. AR reiterated the submissions made before the FAA and submitted that during the course of proceedings before the lower authorities, details of cash deposits were submitted, however, the Id. FAA has not considered the documents furnished. He filed the written submissions which is as under:-

“ 1. During the financial year 2016-17, the appellant company deposited cash into the bank accounts amounting to ` 1,11,77,477/- out of which, the Specified Bank Notes (SBN) amounted to `33,59,000/- during the demonetisation period between 09-11-2016 and 31-12-2016 (addition is made after giving credit for opening balance of cash `6,21,043 and net addition made was `27,37,957).

2. While completing the assessment for the said year, the learned AO has erred in law and fact by treating SBNs deposited in to bank accounts as unexplained cash credit under section 68 of the Income Tax Act, 1961, even though the assessee has sufficient and clear explanation for the same.

3. But the AO has failed to understand the fact that as per section 68 of the IT Act, if any sum is found credited in the books of an assessee for which the assessee has no satisfactory explanation, only then the credit will be treated as unexplained credit. The provisions of the said section are reproduced below,

Cash credits.

68. 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:

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name

called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

4. Therefore, when the appellant has an explanation about the nature and source of such credits or cash which was credited in the bank accounts on regular basis, then the same cannot be treated as unexplained cash credit or unexplained investment.

5. I am directed by the appellant company to explain in brief about the business of the appellant. The appellant is a Private Limited Company engaged in the business of a Non-Banking Financial Institution. The Company provides credit facilities to its customers. Since most of its customers are from rural areas, the customers repay their loan amounts and interest amounts in cash.

6. Most of its customers have deposited the cash directly into the bank accounts of the company. Since most of the customers of the company are from rural areas, they deposit the cash towards repayment of loan and interest or EMI directly in the bank account of the company, rather than coming to the company's office and depositing the amount.

7. This facility is provided by the company to facilitate the smooth and speedy recovery of loans and interest, so that the customers need not visit the company's office often to discharge their repayment obligations.

8. The company had clearly instructed all its customers not to deposit SBNs during the demonetization period, but still the

customers deposited the SBNs. The company has all the information relating to the cash deposits during the demonetisation.

9. The company has already submitted the relevant details about the sources of cash deposit during the assessment proceedings. However, the learned AO has not considered the submissions given by the company and has brought to tax the cash deposited during demonetisation.

10. The appellant possesses all the details for such deposits. The appellant also possesses the necessary explanations for the cash deposits. The details of denomination wise cash deposits during the demonetization period are furnished Paper Book- 2.

11. The appellant has explained the nature as well as the sources of these SBNs and the same have been duly recorded in the books of account of the appellant and hence, there is no reason to treat them as unexplained money of the appellant company.

12. Merely because these SBNs ceased to be legal tender, it does not mean that the amount collected by the appellant company would become unexplained money of the appellant.

13. Further, the appellant has instructed me to make it clear that no exchange facility against demonetized notes was entertained by the appellant company.

14. In this context, we would like to put reliance on the judgment of the Hon'ble High Court of Judicature at Bombay in the case of Principal Commissioner Vs Ami Industries (India) P Ltd, Income Tax Appeal No. 1231 of 2017. The judgement held that "As per the provisions of Section 68 of the Act, for any cash credit appearing in the books of appellant, the appellant is required to prove the following-

- a) Identity of the party
- b) Genuineness of the transaction
- c) Creditworthiness of the party

15. If the above conditions are satisfied, then the amount cannot be treated as unexplained money in the books of the appellant.

16. A copy of the above judgement is enclosed herewith this submission.

17. The judgement of the above case can be relied upon in our case also. We satisfy the conditions mentioned above-

- a) Regarding the identity of the parties, I am directed to state that the parties are the regular customers of the company. To substantiate this point, the details regarding loan disbursed to them can be furnished if need be.
- b) Regarding the genuineness of the transaction, I am directed to state that all the transactions were for repayment of loans and interest or EMIs. There were not any other transactions. To substantiate this point, the loan account extracts, or ledger extracts of the parties can be furnished if need be.
- c) Regarding the creditworthiness of the party, I am directed to state that as they are all the customers of the company, they were advanced loans earlier, which they repaid as installments/EMIs.

18. The appellant has satisfied all requirements of section 68 of the Income-Tax Act, 1961.

19. These notes became SBNs after they were notified as such by the Reserve Bank of India and by the Income Tax Department. Hence, we are not able to understand how the provisions of section 68 of the Income-tax Act can be invoked on the support of the notification by the RBI.

20. Further I would like to rely upon the recent judgement of Honorable Bengaluru Bench of ITAT in the case of 'Sri Bhageeratha Pattina Sahakara Sangha Niyamitha v/s ITO Ward-3 Davanagere' pronounced on 18-02-2022.

21. In the above case, the ITAT has held that the contraventions, if any, of the notification issued by RBI would

not attract the provisions of sec. 68 of the Income tax Act and has set aside the order passed by Ld. CIT(A).

22. Thus, treating cash deposits as unexplained cash credit is totally erroneous.

23. Hence, the learned AO erroneous in law for treating the cash deposited during the demonetisation period as unexplained cash deposits under section 68 of the Act.

24. We plead before your good selves not to treat this as unexplained cash credit and also request you to drop the demand raised by the AO.

25. The appellant has clear explanations for all the cash deposits made during the year including the demonetisation period.

26. The appellant has duly accounted for all the cash during the whole year.

27. A copy of the above judgement is enclosed herewith this submission.

28. The appellant has duly accounted for all the cash during the whole year.

Hence, the learned AO erroneous in law for treating the SBNs deposited during the demonetisation period as unexplained cash credits under section 68 of the Act.”

5. The ld. DR relied on the order of lower authorities and submitted that the assessee was not authorized to accept any demonetized notes of Rs.500 & 1000 from 09.11.2016 to 30.12.2016 and in spite of knowing the fact, the assessee accepted the demonetized currency, therefore both the lower authorities were justified in making addition u/s. 68.

6. Considering the rival submissions, we note that here the dispute is only regarding cash deposits during the demonetization period in the old currency notes of Rs.500 & 1000 in the bank account of assessee. We note from the submissions made that the members/borrows have directly deposited into the assessee's bank account in old currency notes and assessee was not authorized to collect/accept money in denomination of Rs.1,000 & 500 and in this regard bank has also issued certificate which is placed on record. We also note that assessee has submitted details of cash transaction of Rs.7,00,000 and 5,48,860. We also note from the list submitted that the deposits of Rs.2447, 9417, 2363, 12978 etc. and so on. Therefore it is clear that the assessee has submitted detail of those currency notes which were in operation and not in operation. We also note from the order of lower authorities that both the lower authorities have not examined the issue in the light of CBDT instruction/notification regarding examination/enquiry issued by CBDT for demonetized cash. Similar issue is decided by coordinate Bench of Tribunal in the case of Bhoopalam Marketing Services P. Ltd. Vs ACIT in ITA No. 375 / Bang/ 2022 for the AY 2017-18 in which it has been directed to AO for examination/investigation of cash deposits during the demonetisation period as per CBDT instructions. The relevant part of the judgment is as under:-

“We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly the assessee has deposited Rs.298,08,080/- during the post-demonetization between 09/11/2016 and 30/12/2016. Therefore Ld.AO made addition of INR 5,82,76,300/- as income of the assessee u/s. 68 of the income

tax act, by passing assessment order u/s. 144 of the Act. The Ld.AO made such addition as the assessee could not file requisite details as the notice was issued to the email address that was not functional. In the interest of justice, we deem it proper to remand the issues back to the Ld.AO for a de novo verification.

7.1 We have carefully gone through the various standard operating procedures laid down by the central board of direct taxes issued from time to time in case of operation clean. The 1st of such instruction was issued on 21/02/2017 by instruction number 03/2017. The 2nd instruction was issued on 03/03/2017 instruction number 4/2017. The 3rd instruction was in the form of a circular dated 15/11/2017 in F.No. 225/363/2017-ITA.II and the last one dated 09/08/2019 in F.no.225/145/2019-ITA.II. These instructions gives a hint regarding what kind of investigation, enquiry, evidences that the assessing officer is required to take into consideration for the purpose of assessing such cases.

8. In 1 of such instructions dated 09/08/2019 speaks about the comparative analysis of cash deposits, cash sales, month wise cash sales and cash deposits. It also provides that whether in such cases the books of accounts have been rejected or not where substantial evidences of wide variation be found between these statistical analyses. Therefore, it is very important to note that whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money.

8.1 The instruction dated 21/02/2017 that the assessing officer basic relevant information e.g. monthly sales summary, relevant stock register entries and bank statement to identify cases with preliminary suspicion of back dating of cash and is or fictitious sales. The instruction is also suggested some indicators for suspicion of back dating of cash else or fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year. It also suggests that, abnormal jump in percentage of cash trails to on identifiable persons as compared to earlier histories will also give some indication for suspicion. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases is also some indication for suspicion of fictitious sales. Transfer of deposit of cash to another account or entity, which

is not in line with the earlier history. Therefore, it is important to examine whether the case of the assessee falls into any of the above parameters are not.

8.2 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions. We are aware of the fact that not every deposit during the demonetisation period would fall under category of unaccounted cash. However the burden is on the assessee to establish the genuineness of the deposit in order to fall outside the scope of unaccounted cash. The Ld.AO shall verify all the details / evidences filed by the assessee based on the above direction and to consider the claim in accordance with law.”

7. Respectfully following the above judgment, we remit this issue back to the AO for fresh examination of cash deposit during the demonetisation period in the light of CBDT instructions to the extent of applicability of the case. The assessee is directed to file necessary documents that would be essential and required for substantiating his case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings for early disposal of the case.

8. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 21st day of August, 2024.

Sd/-
(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 21st August, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.