IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

ITA No.1376/Bang/2024
Assessment Years: 2017-18

Abhinavasri Vividoddesha Souharada Sahakari Sangha Niyamitha Kanakagiri Navali Road, Kanakagiri, Tq, Gangavathi Dist. Koppal – 583 283. **PAN – AADAA 4911 E**	Vs.	The Income Tax Officer, Ward – 1, Koppal.
APPELLANT		RESPONDENT

Assessee by	:	Shri Veeranna M Murgod, C.A
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel

Date of hearing	:	22.08.2024
Date of Pronouncement	:	27.08.2024

O R D E R

PER WASEE M AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 07/02/2024 vide DIN No. ITBA/NFAC/S/250/ 2023-24/1060616026(1) for the assessment year 2017-18.

2. The first issue raised by the assessee in ground No. 2 is that the ld. CIT(A) erred in confirming the addition of Rs. 14,100/- on account of non-deduction of TDS on the audit fee u/s 194J of the Act.

2.1 The AO during the assessment proceedings found that the assessee has failed to deduct TDS on the expense of audit fees and, therefore, he disallowed the same by invoking the provisions of sec. 194J of the Act and added to the total income of the assessee.

3. On appeal, the ld. CIT(A) confirmed the order of the AO by observing as under:

> *"8.3.1 As far as issue of Disallowances/Additions of Rs.14,100/- as disallowance under section 40(a)(ia) for not withholding the tax on audit fees debited to profit and loss account is concerned the same is not covered by the provisions of 194A(3) of Act. Therefore the assessee was liable to deduct TDS on Audit fees paid. Accordingly, the disallowance made by the AO of Rs.14,100/- is confirmed."*

4. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

5. The ld. AR before us filed a paper book running from pages 1 to 41 and reiterated the submissions made before the authorities below. On the other hand, the ld. DR vehemently supported the orders of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. The provision of sec. 194J mandates not to deduct TDS if the payment does not exceed the threshold limit i.e Rs.30,000/- only. Admittedly, in the present case, the audit fee is Rs. 14,100/- only which is below the threshold limit. Therefore, we are of the view that no disallowance on account of non-deduction of TDS u/s 194J of the Act is warranted. Hence, we set aside the finding of the ld. CIT(A) and direct the AO to delete the addition made by him.

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7. The next issue raised by the assessee in ground No. 2 and 3 is that ld. CIT(A) erred in confirming the addition of Rs. 28,16,500/- as unexplained cash credit u/s 68 of the Act.

8. The AO during the assessment proceedings found that the assessee deposited cash during the demonetization period, the source of which was not explained, therefore, the AO treated the sum of Rs. 28,16,500/- as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

9. On appeal, the ld. CIT(A) confirmed the same for 2 reasons firstly, the cash deposited in the bank was no more a legal tender and secondly the source of cash deposit was not explained by the assessee. Thus, the ld. CIT(A) upheld the finding of the AO.

10. Being aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

11. The ld. AR before us reiterated that submissions made before the authorities below. On the other hand, the ld. DR vehemently supported the order of the authorities below.

12. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee claimed to have received money in SBN after 8 November 2016 which was deposited in the bank account during the demonetization period. As per the revenue, the SBN were not the legal tender during the relevant time and therefore such currency was nothing but a piece of paper having no value. But the assessee by accepting

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such SBN during demonetization and then depositing such SBN in its bank account during the demonetization period has got the benefit of equivalent value in the new currency which was representing the unexplained money of the assessee and therefore the same was added under the provisions of section 68/69A of the Act.

12.1 It is the admitted position that the specified bank notes (cessation of liabilities) Act 2017 provides that no person shall knowingly or voluntarily hold, transfer, or receive any specified bank note on and from the appointed date i.e. 31st day of December 2016. Before 31st December 2016 i.e. between 9th November 2016 to 31st December, the banks, and other institutions such as petrol pumps, hospitals, and Government Department were allowed to accept SBN with certain restrictions. In other words, up to the appointed date, the Government of India and RBI were bound to exchange the SBN once they are tendered for exchange until 30th December 2016. Accordingly, such SBN cannot be treated as just a piece of paper having no value on or after 9 November 2016 as alleged by the revenue. We also find that the Chennai Tribunal in the case of Raju Dinesh Kumar v. DCIT reported in 159 taxmann.com 1598 involving identical facts and circumstances has held as under:

> ***10.*** *Having said so, let us come back to the explanation of the assessee with regard to source for remaining cash deposits. The assessee claims that he is into manufacturing of various kinds of dhalls and sells to unregistered dealers in cash. The assessee claims that he has collected cash in demonetized currency from customers even after 09.11.2016 and said cash receipts is not violation of SpecifiedBankNotes (Cessation of Liabilities) Act, 2017. We find that although, the Government of India & RBI issued various notifications and circulars barring people transacting in SBNs, but, as per SpecifiedBankNotes (Cessation of Liabilities) Act, 2017, no person shall accept or transact any SBNs from the appointed date. As per said Act, appointed date is 31.12.2016. From the above, it is very clear that up to appointed date, persons can transact in SBNs. However, the only requirement is, they should be able to establish source for said cash deposits. This principle is further fortified by the decision of the ITAT Chennai Bench in the case*

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of Amar Sparklers Factory v. ITO in [IT Appeal No. 808 (Chny) 2023, dated 11-10-2023],

12.2 In view of the above and after considering the facts in totality, we hold that the SBN deposited by the assessee during the demonetization period cannot be treated as unexplained money under section 68/ 69A of the Act merely because the assessee accepted the same after announcement of demonetization scheme.

12.3 However, it is pertinent to note that the assessee is under the obligation to explain the source of money received during the demonetization period, which has not been verified by the authorities below. Therefore, we are inclined to set aside the issue to the file of the AO for fresh adjudication as per the provisions of section 68/69A of the Act or any other provisions of the Act as applicable to the impugned transaction for the cash received from the parties. Hence, the ground of appeal of the assessee is hereby partly allowed for the statistical purposes.

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

Order pronounced in court on 27th day of August, 2024

Sd/-	Sd/-
(PRAKASH CHAND YADAV)	**(WASEEM AHMED)**
Judicial Member	Accountant Member

Bangalore
Dated, 27th August**,** 2024

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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