

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.941/CHNY/2024

निर्धारण वर्ष/Assessment Year:2017-18

Shri Durairaj Murugesan,
C87, Periyar Vegetable Market,
Koyambedu,
Chennai – 600 092.

The Income Tax Officer,
Vs. Non-Corporate Ward 8(1),
Chennai.

PAN: AVFPM 1925N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Ms. Jharna B. Harilal, CA

प्रत्यर्थीकी ओर से/Respondent by

: Ms. R. Anita, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 22.08.2024

घोषणा की तारीख/Date of Pronouncement

: 30.08.2024

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in Order No.ITBA/NFAC/S/250/2023-24/1061865865 (1) dated 01.03.2024. The assessment was framed by the Assessing Income Tax Officer, Non-Corporate Ward 8(1), Chennai for the

assessment year 2017-18 u/s.144 r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 29.12.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A)-NFAC confirming the action of AO in treating the cash deposits made during demonetization period in Specified Bank Notes(SBNs) amounting to Rs.69,46,130/- as unexplained credit u/s.69A of the Act and taxing the same u/s.115BBE of the Act.

3. Brief facts are that the assessee is engaged in the business of mobile phone recharge, train and bus ticket booking and trading in vegetables and fruits in wholesale vegetable market on commission basis at Koyambedu, Chennai. The AO during the course of assessment proceedings made addition under the head 'income from business and profession' based on deposits made in assessee's bank accounts by treating the same as turnover amounting to Rs.8,77,09,335/- and estimating the profit rate at 8%. The AO also added cash deposits made during demonetization period in SBNS amounting to Rs.80,46,130/- deposited w.e.f. 09.11.2016 to 31.12.2016. The AO treated the same as unexplained money u/s.69A of the Act and taxed the same u/s.115BBE of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) deleted the addition made by AO being income from business and profession added separately, for which Revenue is not in appeal. As regards to addition made by AO of cash deposit made during demonetization period in SBNs, the CIT(A) after taking remand report from the AO restricted the addition at Rs.69,46,130/- as against addition made by AO of Rs.80,46,130/-. The CIT(A) reiterated the gist of remand report in his order at para 5.8.1 as under:-

“5.8.1 In the remand report, the JAO has stated that on perusal of the cash book, it is noticed that the assessee had cash balance of Rs.22,37,359/- as on 08.11.2016. The assessee had deposited cash of Rs.8,00,000/- on 10.11.2016 in city Union Bank A/c No.510909010036805 and Rs.3,00,000/- on 10.11.2013 in Bank of Baroda account No.802620110000712. Hence the amount of Rs.11,00,000/- deposited in the Banks on 10.11.2016 may be considered as cash in hand and the balance amount of Rs.69,46,130/- made in old/demonetized currency (Specified Bank Notes) may be treated as unexplained money u/s 69A.”

The CIT(A) finally deleted the addition of Rs.11,00,000/- and restricted the addition at Rs.69,46,130/- by observing in para 5.9.2 as under:-

“5.9.2 In view of the above facts and circumstances of the case and above discussion, I am of the considered opinion that the assessee has not explained satisfactorily about the source of cash deposited amounting to Rs.69,46,130/- as SBNs during the demonetization period. Therefore, Rs.69,46,130/- shall be considered as deemed to be income u/s 69A of the Act and to be taxed @ 60% as per section 115BBE of the Act. Accordingly, the addition of Rs.69,46,130/- is upheld and the assessee gets relief of Rs.11,00,000/-. The ground no.3 is therefore partly allowed.”

Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, the Id.AR for the assessee stated that the assessee had realized the amount from debtors as well as sale consideration received during demonetization period, which was deposited in assessee's bank account in SBNs admittedly. The Id.AR contended that the assessee had included cash deposits as part of sales turnover and for this, complete books of accounts, bank statements, computation of income, profit & loss account, balance sheet along with Form No.3CD i.e., audit report along with its enclosures were filed even during appellate proceedings. The Id.AR for the assessee stated that the assessee is engaged in the business of vegetables and fruits trading in wholesale vegetable market and trading in vegetable is predominantly done in cash only in the wholesale market. It was contended that all the small vendors in this business does not use banking system either to pay or to receive proceeds and hence, the assessee was forced to receive only in cash from the vendors during demonetization period. It was also contended that during demonetization period, the assessee had realized outstanding amount from debtors in demonetized currency as well as sale consideration received during the course of that period and had been deposited in his bank accounts. It was contended that the entire

cash deposits includes are part of sales turnover. The assessee has recorded the receipts in the books of accounts which is evident from audit report, financial statements and even the assessee has adopted the same modus operandi in future year also. The Id.AR filed audit report in Form No.3CD from where, he drew our attention to gross turnover during preceding previous year as detailed out in Item No.40, wherein immediately preceding previous year, the turnover was Rs.49,18,500/- but in this year, the turnover is Rs.10,79,17,296/-. It was contended that in this year, the turnover increased due to the fact that the assessee has started wholesale trading of fruits and vegetables and hence, margin has become lower compared to earlier years, which is evident from comparative audit reports which are enclosed in assessee's paper-book now. Further, the Id.AR also drew our attention to Co-ordinate Bench decision in identical facts and of same nature of business in the case of Mr.Ganapathy Palaniyappan in ITA No.557/CHNY/2022, order dated 04.01.2023, wherein the Tribunal has taken exactly identical view and accepted the explanation furnished by assessee. Further, it was contended that the opening cash balance in the books of accounts as on 08.11.2016 is at Rs.22,37,359/- as admitted by the AO and hence, to that extent also addition should be deleted.

6. When these facts were confronted to Id. Senior DR, she relied on the assessment order and that of the order of CIT(A).

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that admitted facts are that the assessee produced complete books of accounts, computation of income, profit & loss account, balance sheet and audit report in Form No.3CD along with enclosures. The assessee in his paper-book also filed comparative figures of gross turnover, profit rate comparing with previous year with that of the preceding previous year. The arguments of Id.AR could not be controverted by the Department that the cash deposit is part of sales turnover of the assessee. It is admitted fact that assessee is engaged in trading in vegetables and fruits on commission basis and as argued that this year, he was in wholesale trading, we noted that on identical facts, the Co-ordinate Bench of this Tribunal in the case of Ganapathy Palaniyappan, *supra* has considered this issue and held in paras 9 to 12 as under:-

“9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The fact born out from record indicates that the assessee is a trader of fruits in Koyambedu market. The assessee purchases and sells fruits in Koyambedu market. The assessee predominantly deals with cash which is evident from the fact that more than 70% of his turnover for earlier financial years is in cash. If you see pattern of cash deposits from financial year 2014-15 to financial year 2016-17, the assessee has made huge cash deposits month on month to various bank accounts which is almost equal to cash deposits made in the month of November, 2016 during demonetization period. Although, there is slight increase in cash deposits in the month of

November, 2016 when compared to November, 2015, but the explanation of the assessee was that during demonetization period, he has dealt with specified bank notes because he was dealing with perishable goods like fruits. Further, unless he sells his goods by accepting specified bank notes, he could not recover whatever amount invested for purchase of fruits. We find that, the main business activity of the assessee is trading in fruits, which is highly perishable. We further, noted that the assessee is declaring huge turnover from last three to four financial years which runs into several crores. The assessee had made huge cash deposits from financial year 2014-15 to 2016-17, which runs into several crores. For example, cash deposit in the financial year 2014- 15 is about Rs. 16.90 crores. Similarly, cash deposit in the financial year 2015-16 is about Rs. 17.63 crores. If you see the pattern of cash deposits for last two financial years, we find that there is no sudden spike in cash deposits made during the demonetization period i.e., November, 2016. Although, there is slight increase in cash deposits in the said period, explanation furnished by the assessee is plausible because of nature of business he is trading with, which is highly perishable. If the assessee does not sell his goods quickly, he may incur huge losses. Therefore, the reason given by the assessee for accepting specified bank notes even after 08.11.2016 is reasonable and bonafied. Therefore, we are of the considered view that the AO and CIT(A) has erred in not accepting explanation furnished by the assessee for accepting specified bank notes after 08.11.2016.

10. Having said so, let us come back to the source for cash deposits. The assessee has explained source for cash deposits out of sale receipts. In fact, the AO and CIT(A) never disputed fact that source for cash deposits is out of sale proceeds for the month and for earlier months. In fact, the CIT(A) has accepted the arguments of the assessee and also directed the AO to assess cash deposits under the head income from other sources, by considering explanation offered by the assessee. But, the only objection of the AO and CIT(A) was that the assessee has accepted specified bank notes, even though RBI has prohibited dealing with specified bank notes from 08.11.2016 onwards except for certain emergency services. We do not find any merit in the reasons given by the AO and CIT(A) for simple reason that no doubt from 08.11.2016 midnight onwards demonetized currency notes of Rs. 500 and Rs. 100 was legally barred. Further, the RBI has issued various guidelines and SOPs for dealing with specified bank notes from 08.11.2016 onwards till the bill Specified Bank Notes (Cessation of Liabilities) bill, 2017 was notified by the Government. As per said bill, from the appointed date, no person shall knowingly or voluntarily, hold, transfer or receive any specified bank note. Further, as per section 3 of said bill, on or from the appointed date notwithstanding anything contained in the Reserve Bank of India Act, 1934 or any other law for the time being in force, the specified bank notes which have ceased to be legal tender, in view of the notification of the Government of India dated 08.11.2016 shall cease to be liabilities of the RBI u/s. 34 and shall cease to have the guarantee of the Central Government under sub-section (1) of section 26 of

the said Act. From the above bill, it is very clear that, on or from the appointed date, no person shall hold, transfer or receive any specified bank notes because said note does not have guarantee of the RBI. In other words, up to appointed date i.e., 31.12.2016 there is no restriction in holding or receiving specified bank notes, even though its legal tender was banned from 08.11.2016 onwards. Since, there is no blanket prohibition on receiving demonetized currency notes up to 31.12.2016, we are of the considered view that, when the assessee has explained reasons for accepting specified bank notes even after 08.11.2016, the AO ought to have accepted the explanation furnished by the assessee when he is not disputing the nature of business and source for cash deposits. In our considered view, what is relevant to decide the issue is, whether the assessee is able to explain source for cash deposits or not. In case, the assessee explains the source for cash deposits, even though there is certain violation of any other Acts or Rules, the AO cannot make addition towards cash deposits.

11. We further noted that a similar issue has been considered by the co-ordinate bench of ITAT, Visakhapatnam in the case of ITO vs Sri Tatiparti Satyanarayana (Supra), where the Tribunal after considering cash deposits out of specified bank notes after 08.11.2016 and also by considering Specified Bank Notes (Cessation of Liability) bill, 2017 held that the AO is incorrect in treating receipt of specified bank notes from cash sales as illegal and thereby, by invoking provisions of section 69 of the Act. The relevant findings of the Tribunal are as under:

“9. We have heard both the parties and perused all the documents on record. We find that there was sufficient cash balance with the assessee as detailed in page No.30 of the paper book. The Specified Bank Notes (Cessation of Liabilities) Act, 2017, defines "appointed day" vide Section 2(1)(a). As per Section 2(1)(a), "appointed day" means the 31 Day of December 2016. Section 5 of the Specified Bank Notes (Cessation of Liabilities) Act, 2017 also deals with prohibition on holding, transferring or receiving specified bank notes. Section 5 states that "On and from the appointed day, no person shall knowingly or voluntarily, hold, transfer or receive any specified bank note". We therefore, find that the specified bank notes can be measured in monetary terms since the guarantee of the Central Government and the liability of Reserve Bank of India does not cease to exist till 31.12.2016. In view of the above, the contention of the Ld. DR, treating the receipt of SBNs from cash sales as illegal and thereby invoking the Provisions of section 69A is not valid in law. Therefore, we dismiss this ground of the Revenue.”

12. In this view of the matter and by following the decision of the co-ordinate bench of ITAT, Visakhapatnam in the case of ITO vs Sri Tatiparti Satyanarayana (Supra), we are of the considered view that the AO as well as the CIT(A) has erred in sustaining addition towards cash deposits to bank account u/s. 69 of the

Act and also levied tax u/s. 115BBE of the Act. Hence, we direct the AO to delete addition made towards cash deposits u/s. 69 of the Act.”

7.1 Taking a consistent view and in the given facts and circumstances of the case, we delete the addition and allow the appeal of assessee.

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

Order pronounced in the open court on 30th August, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 30th August, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT