

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 1321/KOL/2023  
Assessment Year: 2017-18**

The W.B. State Co-op. Agri & Rural Development Bank Ltd. 25D, Shakespeare Sarani, Kolkata-700017. (PAN: AAAJT0468K)	Vs	Assistant Commissioner of Income-tax, Circle-32, Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Palas Chattopadhyaya, AR  
Respondent by : Shri Sailen Samadder, Addl. CIT, Sr. DR

Date of Hearing : 05.06.2024  
Date of Pronouncement : 02.09.2024

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “the Ld. CIT(A)”] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2017-18, dated 01.11.2023, passed against the assessment order dated 26.12.2019 u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. The grounds of appeal raised by the assessee are reproduced as under:

*“1. That the learned CIT(A) has erred both on facts and in law in sustaining the addition of Rs.11,80,457/- albeit under section 69A of the Act. The learned CIT(A) further erred in sustaining Section 69A of the Act for Section 68 of the Act applied by the Assessing officer while making the impugned addition.*

1.1. *That the learned CIT(A) has erred both on fact and in law in not providing opportunity to the co-operative Society when substituting section 69A of the Act for Section 68 of the Act, but retaining the addition of Rs. 11,80,457/- made by the assessing officer by applying Section 68 of the Act.*

2. *That the learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in not providing sufficient opportunity of being heard to the assessee co-operative Society in re-characterizing the additions made by the Learned Assessing Officer in his assessment order dated 26/12/2019. The learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in not providing sufficient opportunity of being heard to the assessee co-operative Society to represent the case virtually.*

*[the 1<sup>st</sup> & 2<sup>nd</sup> sentence says the same thing]*

3. *That the learned A. O. erred in making addition on account of repayment of loan received in form of SBN from Members of the Co-operative Society being unexplained cash credit u/s 68 of the Act of Rs.11,90,457/- which is against the Doctrine of Mutuality. For in view of the circumstances the addition of Rs. 11,80,457/- be deleted.*

4. *That the Ld. CIT(A), NFAC erred in confirming the addition u/s 69A of Rs. 11,80,457/- made by the Ld. ACIT, Circle-32/Kolkata u/s 68 on account of repayment of Loan in form of SBN during demonization period and deposited into Bank by wrongly and illegally computed Income Tax u/s 115BBE of the Income Tax Act, 1961 although on facts and circumstances of the case, such action being arbitrary, fallacious, unwarranted and illegal must be quashed.*

5. *That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds."*

3. Brief facts of the case are the assessee Co-operative Society filed its Income Tax Return on October 31, 2017 for Assessment Year 2017-18, showing Total Income of Rs 87,79,030/-. The return of income was selected for scrutiny. The Assessing Officer passed the impugned Assessment Order dated 26.12.2019 under Section 143(3) of the Act in which he added the cash in Specified Bank Notes (SBNs) amounting to Rs.11,80,487/- which were claimed to be received by the assessee from its members towards repayments of their loans and treated the same as unexplained cash credits u/s 68 of the Act and added the same to the total income which was assessed at Rs. 99,59,487/- as against the Total Income of Rs. 87,79,030/- shown in the return of income. It was argued before the Assessing Officer that the assessee was compelled to accept Specified Bank Notes (SBNs) during the demonetization period from its

Member-Farmers who, during the period of demonetization, were hard pressed to arrange cash to repay their instalment dues in order to be eligible for fresh loans for crop cultivation, which were disbursed in new currency. It was stated that having no other ways and means, the assessee was compelled to accept Specified Bank Notes (SBNs) towards recovery of loans from the farmers. It is stated that the Ld. AO has accepted in the impugned assessment order that the amount has been received from the farmers after the demonetization period. Therefore, the source of receipt of the amounts was explained and thus the onus on the assessee to explain the cash received by the assessee had been satisfactorily fulfilled. The Ld. AO had not referred to/drawn attention to any contrary documents as regards the source of cash recorded in the books of the assessee to categorize it as unexplained. Hence, the addition u/s 68 of Act, may not be strictly applicable in the Appellant's case and is liable to be deleted.

Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who confirmed the addition made but modified the section as 69A as against section 68 invoked by the Ld. AO. Aggrieved with the order of the Ld. CIT(A), the assessee has filed this appeal before the Tribunal. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the order of the Ld. CIT(A) may be upheld.

4. We have heard the rival contentions and also gone through the written submissions filed. For arriving at the excess cash deposited in the bank account, the Assessing Officer compared the cash received in the previous year during the corresponding period of demonetisation with the cash received during the current year during the period of demonetisation and arrived at the excess figure of Rs. 41,09,457/-. As the cash in hand on 8.11.2016 was Rs. 29,29,000/-, he computed the excess cash at Rs. 11,80,487/- and added the same under section 68 of the Act which the

Ld. CIT(A) has held to be added under section 69A by invoking his plenary powers under section 251 of the Act. The comparative figures of cash deposited during FY 2014-15 and 2015-16 are shown as under:

<b>Particulars</b>	<b>AY 2015-16 Rs. in Lakh</b>	<b>AY 2016-17 Rs. in Lakh</b>
Total cash deposited during the year	711.76	630.81
Total cash deposited during 01/04 to 08/11	395.98	412.77
Total cash deposited during 09/11 to 31/12	84.86	125.96
Closing cash balances on 08/11/2016		29.29

5. Before proceeding further, it would be appropriate to refer to the provisions of section 68 as well as section 69A of the Act, which are reproduced as under:

**Section 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 sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless,—*

(a) *the person in whose name such credit is recorded in the books of such assessee 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 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 also that nothing contained in the first proviso or second 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.*

**Section 69A.** *Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.*

Hence, section 68 is applicable if any sum is found credited in the books of account and the assessee offers no explanation or the explanation offered by him is not satisfactory while section 69A is applicable if the money found under the ownership of the assessee is not recorded in the books of account and the explanation is either not offered or not found to be satisfactory. The assessee claims that the money deposited in the bank account, though in the form of SBNs, was the receipt from the farmers as repayment of the old loans. The assessee however has not specified the compulsion under which it had received the repayment in SBNs although SBNs had stopped being legal tenders after 08.11.2016 and the assessee was not authorised to receive the same under any notification issued by the RBI, yet had violated the provisions and had received the same. Simultaneously, the Assessing Officer has not added the entire amount received during the period of demonetisation as unexplained cash credits but had only added the excess amount received during the period of 08.11.2016 to 31.12.2016. Therefore, there is merit in the contention of the assessee that the Assessing Officer had accepted that the repayment was from the farmers and as per the cases relied upon by the assessee before the Ld. CIT(A), on the principle of mutuality, the repayment of loan from the debtors could not be treated as unexplained cash credit. The Ld. CIT(A) has relied upon the decision of the Hon'ble Hyderabad Bench of

the Tribunal in the case of M/s. Vaishnavi Bullion Private Limited, where an addition of about Rs. 100 Cr was upheld as unexplained credit in the batch of appeals involving two jewellery and bullion dealers in the context of post demonetisation cash deposits. However, the same referred to sale proceeds of gold while the case of the assessee is receipt of the repayment of loans from its members, hence the reliance upon the decision cited is not correct. The assessee claims that it had filed the details of loans from the farmers on the portal as well as before the Assessing Officer but the Assessing Officer has not identified as to which repayments were being treated as unexplained cash credits. For the non-applicability of section 68 of the Act, the identity of the creditors, their creditworthiness and the genuineness of the transactions have to be proved and in case of failure of proving any of them, the credits can be treated as unexplained. The Ld. CIT(A) has treated the excess amount deposited during the corresponding period as unexplained money under section 69A. However, this presupposes that the assessee ought to have received the same amount of repayment of loan as in the earlier years during the corresponding period, which may not be possible in any business as the repayment of loan depends upon the availability of money with the debtors and their paying capacity. Since neither the assessee has been able to demonstrate as to under what compulsions or the authority of law it had received the repayment of loans in SBNs, nor the Assessing Officer or even the Ld. CIT(A) has been able to demonstrate how the excess amount is to be treated as unexplained cash credit or unexplained money as the same was not out of the books of account but was entered in the books of account and without identifying the specific transactions as bogus or unexplained, merely by comparing the repayment or receipt of cash during the corresponding period, the excess amount could not be treated as unexplained money. Incidentally, the assessee had deposited less cash

during the entire financial year relevant to AY 2016-17 than in the previous financial year relevant to AY 2015-16.

6. Since both the Ld. AO as well as the Ld. CIT(A) have not treated the entire repayments received during the demonetisation period as unexplained money or unexplained cash credits, they ought to have identified the specific transactions or repayments which, in their view, were to be treated as unexplained after examining the evidence filed by the assessee. Similar issue came up for consideration in the case of Prem Prasad Vs. Income Tax Officer, Ward-3(2), Malda in ITA No.12/KOL/2024 Assessment Year: 2017-18 before the 'B' Bench, ITAT, Kolkata, in which vide order dated 23.07.2024, the issue has been decided as under:

*11. Similar issue relating to cash deposited during the demonetisation period also came up before the **ITAT SMC-'A' Bench, Bangalore in the case of Shri Aijaz Ahmed Suri Vs. The Income Tax Officer, Ward – 1, Bagalkot**, in which the following procedure has been prescribed for assessing the unexplained deposit:*

*6. 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 give 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.*

*7. In one 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. Instruction 21/02/2017 issued by the CBDT suggests some indicators towards verifying the suspicion of backdating of cash. It also suggests indicators to identify abnormal jump in cash trials on identifiable persons as compared to earlier history in the previous year. Therefore, in our opinion it is important to examine whether assessee falls into any of these*

*categories and transfer of deposit of cash is not in line with history of transactions in the preceding assessment years.*

*9. The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions based on the facts in present case. 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. Assessee is directed to furnish PAN and address details of the depositors from whom loan repayment has been accepted in 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.*

**11.1 Further, in the case of Jagjit Singh v. Income-tax Officer [2023] 149 taxmann.com 48 (Amritsar - Trib.), it has been held as under:**

*5. We heard the rival submission and relied on the documents available on the record. Considering the order of the revenue authorities the assessee was not able to submit the confirmation from the sundry debtor, M/s AD Traders. The confirmation is annexed with the paper book of the assessee APB page no. 3. The assessee received SBN during demonetization period on dated 10-11-2016. The amount was deposited in the bank account. The amount was received before the appointed day i.e., dated 31-12-2016. So, the assessee shall not in a violation for receiving SBN as per the Act. In Income-tax Act the source was unexplained before the revenue authorities as the evidence was not able to submit before any of the lower authorities by the assessee. Considering the factual matrix here we direct to set aside the matter before the ld.AO for necessary verification de novo. Both the revenue and the counsel of the assessee had not made any objection for remanding back the issue before the ld. AO. Needless to say, that the AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defence shall be admitted by the AO and adjudicated on merits in accordance with law. We order accordingly. Accordingly, the appeal of the assessee is remanded back to the ld. AO as per above terms.*

*12. Hence, in order to be fair to both the assessee and the Ld. AO, and respectfully following the orders of the coordinate Benches (supra), the assessment order is set aside to the Ld. AO with the direction that the reply filed by the assessee on the portal and the evidence in possession of the assessee as is mentioned in the Form No. 35 filed before the Ld. CIT(A) that the balance Rs.69,22,742/- may also be cash deposit before and after the demonetization period subject to reconciliation or payment due from debtors etc. should be considered and thereafter the income/additions, if required may be made keeping in view the above judicial pronouncements and the departmental instructions and no addition may be made on this ground without proper verification..... The assessee shall produce all required evidence before the AO as and when called for and shall not seek any unnecessary adjournment. Thereafter, the AO shall pass an order in accordance with the facts of the case. Hence, ground no. 3 of the appeal of the assessee is allowed for statistical purposes.*

7. Hence in order to be fair to both the assessee as well as the assessing officer, the order of the Ld. CIT(A) is hereby set aside to the Ld. AO who shall frame the assessment order afresh as per law after analysing the reply of the assessee and the evidences filed by it. The assessee shall file evidence of the outstanding balance with the farmers, the evidence for the receipt of loans and the compulsion under which the receipts were obtained in old SBNs while, as is rightly pointed by the Ld. AO as well as the Ld. CIT(A), the farmers had the option to deposit the money in the banks specified for the purpose and the assessee could have also postponed or rescheduled the repayment of the loans and not treated the farmers under default. Hence for statistical purposes, the appeal is allowed and the Ld. AO is directed to reframe the assessment order afresh as per law keeping in view the guidelines and the instructions of the CBDT and the legal provisions.

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

Order pronounced in the open court on 2<sup>nd</sup> September, 2024.

**Sd/-**  
**(Sanjay Garg)**  
**Judicial Member**

**Sd/-**  
**(Rakesh Mishra)**  
**Accountant Member**

***Dated: 2<sup>nd</sup> September, 2024***

AK, PS

Copy to:

1. The Assessee
2. The Respondent.
3. CIT(A), NFAC, Delhi
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata