

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI MANU KUMAR GIRI, HON'BLE JUDICIAL MEMBER
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 1452/Chny/2023

निर्धारण वर्ष / Assessment Year: 2017-18

Manikandan Subash Chandra
Bose,
New No. 70 (old 131), Big
Bazaar Street,
Thirumangalam – 625 706

[PAN: ABCPM-6497-L]

(अपीलार्थी/Appellant)

The Income Tax Officer,
v. Non Corporate Ward 2(4),
Madurai – 625 002.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. B. Pratap, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 03.07.2024

घोषणा की तारीख/Date of Pronouncement : 11.09.2024

आदेश / ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2017-18, vide order dated 10.11.2023.

2. The assessee has raised the following grounds of appeal:

"1. The impugned order is illegal, opposed to the facts, contrary to law, against the principles of natural justice and without jurisdiction, and therefore, liable to be quashed.

2. *The learned assessing officer erred in adding Rs.55,77,500/- under section 69A when the assessee maintained regular books of accounts and the cash deposits do get reflected in the books of accounts.*

3. *The learned assessing officer failed to note that section 69A is applicable only when the money is not recorded in the books of accounts whereas in the case of the assessee the money is recorded in the books of accounts and therefore section 69A is not applicable.*

4. *The learned assessing officer ought to have seen that the cash balance available as on 08-11-2016 as per the books of accounts could be deposited after the announcement of the Demonetization Scheme.*

5. *The learned assessing officer failed to note that the Income Tax Act is a self contained code independent of demonetization scheme.*

6. *The learned assessing officer ought to have seen that there is no provision in the Income Tax Act to tax the sale proceeds received in demonetized currencies of SBN deposited in the bank account as unexplained money under section 69A.*

7. *The learned assessing did not point out any defects in the books of accounts and rejected the books of accounts as incomplete or incorrect before adding the cash deposits under section 69A.*

8. *The appellant prays for leave to add, alter, amend or modify any or all the grounds at any time before or at the time of hearing."*

3. The brief facts of the case are that, the assessee is an individual and carrying on the business of trading in pulses and grains, filed his return of income for the AY 2017-18 admitting gross total income of Rs.8,26,303/-. The case was selected for scrutiny assessment under CASS with the reason as "Large cash

deposits during demonetization period and Business return filed for the first time". The AO noticed from ITS details that the assessee had deposited Rs.55,77,500/- in cash during demonetization period in Tamilnadu Mercantile Bank Account No.153700060750001. The AO completed the assessment by making addition of Rs.55,77,500/- as unexplained money u/s.69A of the Act and taxed as per provisions of Section 115BBE of the Act by passing an order U/s.143(3) dated 28/12/2019. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id.CIT(A).

4. The Id.CIT(A) on perusal of the submissions of the assessee and the order of the Assessing Officer has confirmed the addition by holding as under:

"6.2 The addition of Rs.55,77,500/- made by the Assessing Officer relating to cash deposits as unexplained money u/s.69A of the Act and the submissions of the appellant has been perused. It can be seen from the assessment order that the appellant for the first time reported business income as a proprietary business for the AY 2017-18 declaring total income at Rs.8,26,303/-. Prior to this the appellant was a partner in firms and declared less than Rs.2.00 lakhs income. It clearly shows that there is an abnormal increase in income which is not in trend with the immediately previous assessment year incomes. Further, as per profit and loss account as declared by the appellant in return of income ITR-3 for the AY 2017-18 first year of business, the sales declared by the appellant during the FY 2016-17 relevant to AY 2017-18 is Rs.62,50,110/- and purchases reported is Rs.55,80,681/- and

declared profit before interest, depreciation and taxes is Rs.9,53,900/-. The average sales per month comes to Rs.5,20,843/- and purchases to Rs.4,65,057/-. The average total sales/purchases from 01.04.2016 to 31.10.2016 works out to Rs.36,45,901/- & 32,55,399/- respectively. Thus, the available balance as on 01.11.2016 is Rs.3,90,502/- plus sales made from 01.11.2016 to 8.11.2016. Thus, the appellant was never having cash balance of Rs.55,77,500/- as on 08.11.2016. It can clearly be understood that the cash deposited during demonetization period does not pertain to business income and are outside books. Burden to explain the source of cash deposits was on the appellant who as per the find has not been able to discharge this burden. Therefore, the action of the AO is upheld and grounds raised in this regard are dismissed."

Aggrieved by the order of the Id.CIT(A), assessee preferred an appeal before us.

5. The Id.AR argued that the assessee's case was taken up for scrutiny assessment under CASS for reason "Large Cash Deposits during demonetization period and Business Return filed for the first time on 30/12/2017 having Gross Total Income Rs.8,26,303/- and Total Income Rs.7,85,920/- and paid the taxes due thereon. This Income includes Income from his proprietary business Rs.5,32,210/-. The Income from the proprietary business is the Net Profit shown in the financials prepared from the books of accounts maintained and with necessary additions/ disallowances and deductions made in accordance with the governing provisions in the Income Tax Act. The Ld. AR

stated that the assessee is engaged in the business of trading in pulses and grams in the grey market (business through unauthorized dealers). The principal source of revenue in the business is 'Sales'. The aggregated annual sales were Rs.62,50,110/- and the 'Profit' computed therefrom is the amount of Rs.5,32,210/-. The Ld.AR submitted that the cash deposits in Bank account, including deposits during demonetization period is all the Sales proceeds realized in cash. The Ld.AR further submitted that the Assessing Officer after his due scrutiny and deliberations in the course of the assessment proceedings has ultimately accepted books of accounts and the Business Profit and the Returned Income (subject, however to omitting the Chapter VIA deduction claimed). However, the AO has erred in passing the order by considering the cash deposit aggregating to Rs.55,77,500/- during the demonetization period has been assessed as additional income under section 69A, without rejecting the books of accounts. Therefore, Ld.AR argued that this addition is unlawful. Since, section 69A is very clear that only such of those money, etc not recorded in the books of account can

be added to income as unexplained money. The Extract of Section 69A is given below:

"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."*

6. The Appellant, having income and turnover above the limits prescribed in section 44AA and hence maintained proper books of accounts and furnished the same before the AO during the assessment proceedings. The Ld.AR placed on record and confirm that the Trading Sales made is out of Stocks generated through Purchases. Both the Sales and Purchases are backed by Bills / Invoices and which were furnished before the AO during the assessment proceedings. Therefore, the Ld. AR prayed for deletion of this unlawful addition made U/s.69A of the Act.

7. Further, the Ld.AR stated that the assessee is not new to Business. The assessee is now 47 years and has grown up with a family business M/s.Kumaran & Co, established as a

Partnership Firm in the year 1974, is a Partner in the firm. The Assessee's father and mother are the founder partners. This firm also into business in pulses, grains, maize etc. Since the partners (parents of the assessee) ageing and it was planned to taper / halt the business in the firm. With that plan in view financial year 2016-17 started with minimum business only in the firm. This assessee Partner intended to start a business for himself. The assessee therefore started a business for himself in April 2016, but also found it difficult to cope up. He was able to secure business in the secondary grey market only (through unauthorized dealers) and he could also transact that way only. Sales realization had to happen by cash dealings only in view of the poor identity of the purchasing persons. There was already the Cash transaction restriction and by the time some bigger business could be transacted the Demonetization announcement came. This hurt the cash dealings completely. Meanwhile, monsoon failure also hampered the availability of the products. In the meanwhile, the business plan of the firm was also revisited. Demonetization together with monsoon failure caused difficulty in reviving the business, though it happened good

in the next year and onwards in the firm. The assessee continued his proprietary business in the subsequent years also though in a small scale. In support of narrations above the following information is tabled with evidences annexed:

Turnover of Firm - M/s.Kumaran & Co:

Financial Year 2015 -16	Rs. 3,07,28,418/-
Financial Year 2016-17	Rs. 84,07,788/-
Financial Year 2017 -18	Rs. 3,52,08,306/-
Financial Year 2018 -19	Rs. 7,08,91,049/-

Appellant Proprietary Business:

Financial Year 2016-17	Rs 62,50,110/-
Financial Year 2017-18	Rs 70,52,195/-
Financial Year 2018-19	Rs 21,74,870/-

8. The Ld.AR drew our attention to the Assessing Officer's order U/s.143(3) r.w.s. 263 dated 15/03/2023. There is a further assurance of the learned Assessing Officer having accepted the books of accounts. (Page 2 of the Order). Therefore, the Ld.AR summarised that the Assessing Officer has not rejected the books of accounts and contends that cash deposits in Bank, including that during the demonetization period having been recorded in the books of accounts and such account not rejected in the assessment it is against the statute to invoke Section 69A and make an addition for the same amounts already assessed under one

head. Further, the Ld.AR in support of the case, relied on the decisions of this Tribunal in the following cases:

- a) *Shri Raju Dinesh Kumar Vs. DCIT - ITA No.1321/2023 dated 19/01/2024*
- b) *M/s.Micky Fireworks Industries Vs. ACIT - ITA No.264/2023 dated 26/07/2023*
- c) *Mrs.Umamaheshwari Vs. ITO - ITA No. 527/Chny/2022 dated 14/10/2022*
- d) *Amar Sparklers Factory vs ITO - ITA No. 808/Chny/2023 dated 11/10/2023.*

9. Per contra, the Id.Sr.DR, ascertained the action of the Id.CIT(A) and stated that the assessee has filed his return of income by declaring a turnover of Rs.62.5 lakhs with a business net profit of Rs.4,51,452/- for the first time, only to regularize the cash deposits made during demonetization period of Rs.55,77,500/- out sales proceeds collected in the form of SBNs. Hence, he prayed for confirming the order of the Id.CIT(A).

10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute that the assessee had maintained proper books of accounts and the same has been accepted by the AO without rejecting the books of accounts and also considering the net profit declared as business income the computation of total income, while making the addition of Rs.55,77,500/-

U/s.69A of the Act. The addition has been made by the AO that the sale proceeds has been collected by the assessee in SBNs after the announcement of demonetization by the Hon'ble PM on 08/11/2016, which is not permissible under the law. We find that this issue is covered in favour of the assessee by the decisions of this Tribunal in the following case Shri Raju Dinesh Kumar vs DCIT (Supra), where the Tribunal under the identical set of facts deleted the additions made by the Assessing Officer, after considering this tribunal's following decisions:

- a) *M/s.Micky Fireworks Industries Vs. ACIT – ITA No.264/2023 dated 26/07/2023*
- b) *Mrs.Umamaheshwari Vs. ITO - ITA No. 527/Chny/2022 dated 14/10/2022*
- c) *Amar Sparklers Factory vs ITO - ITA No. 808/Chny/2023 dated 11/10/2023,*

by holding as under:

"9. *We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts borne out from the record clearly indicate that the assessee is running a dhall mill and manufacturing various kinds of dhalls. The facts brought on record by the AO further indicated that the assessee procures various kinds of pulses from local market and manufacturing into various kinds of dhalls and sells to unregistered dealers in cash. The assessee has filed comparative cash sales and cash deposits into bank account for FY 2015-16 & FY 2016-17 and also cash sales and cash deposits for the month of October & November, 2015 and October & November, 2016. On perusal of details filed by the assessee, which has been reproduced by the AO in the assessment order, we find that there is no abnormal variation in cash sales and cash deposits into bank account for FY 2015-16 & FY 2016-17. Further, the cash sales achieved by the assessee for FY 2015-16 is higher than the cash sales reported for FY 2016-17. From the*

details filed by the assessee, it is abundantly clear that there is no sudden increase in cash sales during demonetization period when compared to earlier Financial Years. Further, the assessee has filed cash book and other details to prove availability of cash in hand as on 08.11.2016 at Rs.71,76,208/-. In fact, the AO is not disputed the fact that the assessee has filed cash book and as per said cash book, cash in hand as on 08.11.2016 was at Rs.71,76,208/-. If you go by the nature of business of the assessee and sales trend, it is undoubtedly clear that the assessee's sales predominantly in cash, and thus, the cash in hand shown by the assessee as on 08.11.2016 appears to be genuine and **bona fide**. To this extent, in our considered view, the reasons given by the AO to reject explanation of the assessee for source for cash deposits into bank account is devoid of merits.

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 Specified Bank Notes (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 Specified Bank Notes (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 of Amar Sparklers Factory v. ITO in ITA No.808/Chny/2023 order dated 11.10.2023, where the Tribunal after considering relevant facts has held as under:

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. In so far as addition of Rs. 6,62,783/-, we find that the assessee itself has admitted shortage of source in their cash flow statement filed before the AO. Therefore, from the above, it is undoubtedly clear that the assessee could not explain source for cash deposits to the extent of Rs. 6,62,783/- and thus, we are of the considered view that, there is no error in the reasons given by the CIT(A) to sustain additions made towards cash

deposits to the tune of Rs. 6,62,783/-. In so far as addition of Rs. 20,40,000/- towards advance received from group concerns, it was an argument of the appellant that group concerns have paid advance in cash during demonetization period and deposited into IDBI bank account. In this regard, the appellant has filed necessary details including PAN nos. and confirmation letters from the group concerns to prove receipt of trade advance. The Assessing Officer has not disputed these facts, however made additions only on the ground that the assessee should not have accepted cash in specified bank notes after 08.11.2016. We find that this issue is covered in favour of the assessee by the decision of ITAT, Chennai Benches in the case of M/s. Micky Fireworks Industries vs ACIT in ITA No. 264/Chny/2023, dated 26.07.2023, where the Tribunal under identical set of facts deleted additions made by the Assessing Officer, and the findings of the Tribunal is reproduced as under:

"4. From the facts, the undisputed position that emerges is that the assessee has made sale of fireworks during festival season. The sales are duly accounted for by the assessee in the books of accounts. The accounts have duly been audited. The assessee has realized debtors out of such sale in SBN which have been deposited in the bank account of the assessee. The cash deposited by the assessee has duly been accounted for in the books of accounts. The Ld. AO has not alleged any bogus sales or back dated sales made by the assessee. No defect has been pointed in the books of accounts as maintained by the assessee.

5. It could also be seen that during the course of assessment proceedings, various notices were issued u/s 142(1) from time to time calling numerous details from the assessee. The assessee was required to file numerous details including monthly cash flow statement, inventory of closing stock, copy of sales tax assessment order, monthly cash deposits and credits for various periods, ledger account for purchase and other expenditure, monthly sales gross receipts, monthly purchases, details of old notes and new notes deposited during demonetization period, the day book, Cash book, ledger maintained for business, cash balance as per cash book etc. All these details were duly submitted by assessee vide reply dated 12-12-2019. The assessee also submitted

month-wise cash deposits in all bank accounts, details of old notes deposited at the time of demonetization period. Pertinently, the assessee also furnished details of name, address and PAN of cash depositors who deposited cash during demonetization period. The same has been detailed on pages 24 to 35 of the paper book. Apparently, the same could not be faulted with by Ld. AO. There is no allegation of any irregularity in the books of accounts.

6. 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.

7. The SMC bench of this Tribunal in Mrs. Umamaheswari Vs. ITO (supra), on identical facts, deleted similar additions on the ground that the assessee had duly evidenced the source of cash deposit and therefore, addition could not be made u/s 68. Similar is another decision of SMC Raipur Bench in Rahul Cold Storage Vs. ITO (supra) wherein it has similarly been held that when the deposits were sourced out of business receipts duly recorded in the books of accounts, no such addition could be made u/s 68. The other cited decision of Bangalore Tribunal is also on similar lines.

8. Considering the facts and circumstances of the case, we find force in assessee's case and therefore, delete the impugned addition as made u/s 68. We order so. The Ld. AO is directed to re-compute the income of the assessee."

8. In this view of the matter and by following the decision of ITAT, Chennai Benches, we direct the AO to delete additions made towards source for cash deposits at Rs. 20,40,000/- u/s. 69A of the Act.

11. In the given facts of the present case, there is no dispute with regard to the fact that the assessee's sales predominantly in cash. It is also an undisputed fact that there is no abnormal variation in total sales, cash sales and cash deposits for two Financial Years. The assessee is also able to file various evidences, including month-wise purchase and sales and cash book to prove availability of cash in hand as on 08.11.2016. Therefore, we are of the considered view that going by the nature of business of the assessee and also details submitted for two Financial Years, the explanation offered by the assessee towards source for cash deposits into bank account during demonetization period, is **bona fide** and acceptable. The AO and the Ld.CIT(A) without considering the relevant submissions of the assessee simply made addition towards cash deposits u/s.69A r.w.s.115BBE of the Act. Thus, we set aside the order of the Ld.CIT(A) and direct the AO to delete the addition made towards cash deposits u/s.69A r.w.s.115BBE of the Act."

11. In the given facts and circumstances of the present case, the assessee's sales and collections are predominantly in cash. The assessee has commenced his business during the A.Y. 2017-18 trading in pulses and grains which is similar business of Firm M/s.Kumaran & Co, where he is a partner of the firm, carried on by his parents from very long time. The assessee had furnished complete books of accounts of the business during the assessment proceedings to prove the source of the cash deposits made to his bank account, which has been accepted by the AO along with the Income declared, without rejecting the same. The

AO and Id.CIT(A) without considering the relevant submissions of the assessee mad addition of cash deposits as unexplained money U/s.69A of the Act r.w.s.115BBE of the Act. Thus, we set aside the order of the Ld.CIT(A) and direct the AO to delete the addition made towards cash deposits u/s.69A r.w.s.115BBE of the Act.

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

Order pronounced on 11th September, 2024 at Chennai.

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य/**Judicial Member**

Sd/-

(एस. आर. रघुनाथा)

(S. R. RAGHUNATHA)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 11th September, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT- Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF