

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND**  
**SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1409/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2017-18

Mr. Rathanlal Choudhary, 229/201, Periyar Pathai, Choolaimedu, Chennai-600 094.	v.	The ITO, NCW-19(7), Chennai.
[PAN: ACZPC 3252 B]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr. Tharish. V, CA
प्रत्यर्थी की ओर से /Respondent by	:	Dr. Samuel Pitta, JCIT
सुनवाईकीतारीख/Date of Hearing	:	14.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	18.09.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 15.03.2021 for the Assessment Year (hereinafter in short "AY") 2017-18.

2. The main grievance of the assessee is against the action of the Ld.CIT(A) confirming the action of the AO making addition of Rs.28,88,290/- u/s.69 of the Income Tax Act, 1961 (hereinafter in short



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"the Act") in respect of the Specified Bank Notes (hereinafter in short 'SBNs') deposited during demonetization period.

**3.** The brief facts are that the assessee is an individual who had filed his return of income for AY 2017-18 on 27.03.2018 admitting total income of Rs.5,03,520/-. Later, the case of the assessee was selected under CASS. The AO noted that the assessee is engaged in the Pawn-Broking business (hereinafter in short 'PB') and the assessee has shown to have received interest income of Rs.14,77,013/- from the said business (PB). Further, the AO noted that during the demonetization period, the assessee has deposited a sum of Rs.27,46,600/- in his bank a/c after 08.11.2016 (demonetization period). So, the AO asked the assessee to explain the *nature and source* of the cash/SBN's deposited. The assessee explained that cash/SBN's deposited during demonetization period was the amount he received from Pawnee's in order to release their jewellery pledged with him, while borrowing money from him. Thus, according to the assessee, the amount was his business income. However, the AO disbelieved his contention and was of the view that the cash/SBN received after announcement of demonetization of SBN's [from 09.11.2016 onwards], even if from Pawnee/business cannot be accepted. Anyway, the AO asked the assessee to prove his explanation regarding the nature & source of SBNs [i.e. that the assessee has received the money from the Pawnee's by giving their details like PAN, cash receipts, vouchers, etc.].



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According to the AO, the assessee failed to give any supporting documents to establish his explanation about the nature & source of SBNs; and therefore, he added SBNs deposited to the tune of Rs.27,46,600/- as unexplained investment u/s.69 of the Act.

**4.** Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the action of the AO on the same reasoning as given by the AO.

**5.** Aggrieved, the assessee is in appeal before this Tribunal.

**6.** We have heard both the parties and perused the material available on record. We note that the assessee is engaged in the business of money lending by pledging jewellery of the borrowers. It is noted that the assessee has been confronted by the AO to prove the *nature and source* of the SBNs deposited in his bank account to the tune of Rs.27,46,600/- (*during demonetization period*); and pursuant to that, assessee brought to his notice that he had cash on hand as on 08.11.2016 to the tune of Rs.28,41,707/-i.e, prior to/one day before demonetization was declared by Government; and for proving the same, had filed his cash-book from 01.04.2016 to 31.03.2017 (*found placed at Page No.21-30 of the Paper Book*). Drawing our attention to Page No.26 of the Paper Book, the Ld.AR pointed out that the closing balance as on 08.11.2016 which is noted to be Rs.28,41,707/-; and the details of which we note from perusal of the



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cash-book are that the assessee had received from his borrowers/customers as on 27.10.2016 an amount of Rs.9,49,665/-; and on 31.10.2016, Rs.17,92,295/- (Totaling Rs.27,41,960/-). We also note the breakup of Rs.14,60,000/- (out of Rs.17,92,295/-) which amount was given to him on 31.10.2016 comprises of these details:-

<b>Date of Loan Given</b>	<b>Amount (in Rs.)</b>	<b>Date of Repayment</b>	<b>Pawn Ticket No.</b>
18-02-2016	5,50,000/-	30-10-2016	005670
23-06-2016	4,10,000/-	30-10-2016	006514
27-06-2016	5,00,000/-	30-10-2016	006549
<b>Total</b>	<b>14,60,000/-</b>		

7. And we note that the aforesaid business transaction of assessee are supported by Pawn-tickets [Form 'F' under Tamil Nadu Pawnbrokers Rules, 1943 as Annexure-4]. Further, the assessee has filed the invoices of jewelry pledged before him from which has been retrieved (by the Pawnee's) during the first week of October, 2016, which invoices are found placed at Page Nos.31-36 of the Paper Book which matches with the cash book entries. Moreover, we note that the assessee has shown interest received from business of pawn-broking to the tune of Rs.14,74,862/-, which income has been accepted by the AO. Further, we note that from the bank account of assessee in South Indian Bank shows that he regularly remits/withdraws cash from his bank account. Nothing unusual in the cash deposits as well as withdrawal is noticed from his bank account for relevant assessment year when compared with that of the preceding assessment year, which fact is discernable from perusal of Page Nos.11 to 19 of the Paper Book. Thus, we note that the main thrust



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of contention of the assessee is that the business income of Rs.14,74,862/-, includes the cash deposits of SBNs which was additionally added by the AO. It is noted that the assessee has filed capital account, balance sheet and computation of total income as well as the other details called for by the AO as well as the books of accounts regularly maintained by the assessee which has been accepted by the AO since no infirmity in the books has been alleged by the AO regarding the business receipt of the assessee. In such a scenario, the impugned action of the Ld.CIT(A)/AO to make separate addition of Rs.27,46,600/- can't be countenanced, because, it tantamounts to double taxation.

**8.** As noted supra, the assessee has explained to the AO that the SBNs were receipt from the business of pawn-broking and that he was having cash on hand of Rs.28,41,707/- as on 08.11.2016; and it is noted that the AO hasn't disputed the return of income filled by the assessee to the tune of Rs.5,03,520/-; and it isn't the case of the AO that the assessee had any other source of income other than the business income from pawn broking (money lending by pledging jewellery). In such a scenario, we note that the assessee's total interest income from the business of pawn broking was to the tune of Rs.14,74,862/- which included the SBN's which was in assessee's possession as on 08.11.2016. And it is noted that the assessee has paid the tax on the business/interest income from the borrowers/business; and in such circumstances, separate addition u/s.69



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of the Act of Rs.27,46,600/- ought not to have been made by the AO when the assessee has produced all relevant documents to substantiate that he had cash on hand as on 08.11.2016 to the tune of Rs.28,41,707/- and the deposit amount [SBNs] was only to the tune of Rs.27,46,600/-. In such factual back ground, addition u/s.69 of the Act was not warranted because sec.69 would be attracted only when the assessee has made investments which are not recorded in the books of accounts or in the event, it has been recorded in the books, the assessee failed to prove before the AO, the nature and source of the same or his explanation is not found satisfactory by the AO, then the AO can treat the value of the investment as unexplained investment u/s.69 of the Act. However, in this case, we note that the assessee has recorded the cash/SBNs as receipts from his customers/borrowers which fact is discernable from the cash-book as well as the relevant Pawn-Register/invoices and corroborated by Pawn Tickets in Form 'F' as required under the Tamil Nadu Pawnbrokers Rules, 1943; Therefore, we are satisfied with the nature and source of the cash to the tune of Rs. Rs.27,46,600/- which has been deposited *albeit* during the demonetization period. The Hon'ble Supreme Court in the case of Sreelekha Banerjee & Ors. v. CIT reported in [1963] 49 ITR 112 (SC), observed that "*the department could not act unreasonably and reject that explanation to hold that it was income. If, however, the evidence was unconvincing then such rejection could be made. The department cannot*



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*by merely rejecting unreasonably a good explanation, convert good proof into no proof".* In the present case, the assessee has explained the *nature and source* of SBNs deposited in the bank to the tune of Rs.27,46,600/- as his business income, which was his cash-in-hand a day prior to demonetization. Thus, it is noted that the assessee has discharged his burden to prove the nature and source of cash/SBNs deposits during the demonetization period which was nothing but business receipts. Therefore, the action of the AO to make addition u/s.69 of the Act, is not legally tenable for the reasons stated *supra* as well as for further reasons which will be discussed *infra*.

**9.** It is true that u/s.69 of the Act, when the AO find that any sum has been credited in the books of the assessee, and no explanation was given by assessee about the *nature and source* thereof, or the explanation offered by the assessee is not in the opinion of the AO satisfactory, then the sums credited may be charged to Income Tax as the income of the assessee. In this case, we find that the source of deposit of SBNs has been explained by the assessee as his business, credited out of ordinary business which in-turn has been credited into his bank account and the profit from the transaction has been duly included in the return of income filed by him in the relevant assessment year. Therefore, no addition u/s.69 of the Act is legally tenable since it would tantamount to double taxation of the same income as held by the Hon'ble Gujarat High Court in



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the case of CIT v. Vishal Exports Overseas Ltd., (Tax Appeal No.2471 of 2009) [Gujarat High Court] and also the decision of the Hon'ble Delhi High Court in the case of CIT v. Kailash Jewelry House [Appeal No.613/2010] (Delhi High Court) (refer decision of ITAT Indore Bench in the case of DEWAS SOYA LTD, UJJAIN in ITA No 336/Ind/2012).

**10.** The main reason given by the AO to make addition u/s.69 of the Act was that assessee couldn't have transacted/received SBNs during demonetization period and relies on the relevant notifications issued by the Government of India in this regard. No doubt, Specified Bank Notes of Rs.500/- & Rs.1,000/- has been withdrawn from circulation from 09<sup>th</sup> November, 2016 onwards. And the Government of India & RBI has issued various Notifications and SOP to deal with specified bank notes. Further, the RBI allowed certain category of persons to accept and to deal with specified bank notes up to 31<sup>st</sup> December, 2016. Further, the Specified Bank Notes (Cessation of Liability) Act, 2017, also stated that from the appointed date, no person can receive or accept and transact specified bank notes, and appointed date has been stated as 31<sup>st</sup> December, 2016. Therefore, there is no clarity on how to deal with demonetized currency from the date of demonetization to 31<sup>st</sup> December, 2016. Therefore, under those circumstances, some persons continued to accept and transact the specified banknotes and deposited into bank accounts. Therefore, merely for the reason that there is a violation of certain



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notifications/GO issued by the Government in transacting with specified bank notes, the genuine explanation offered by the assessee towards source for cash deposit can't be rejected, unless the Assessing Officer makes out a case that the assessee has deposited unaccounted cash into bank account in specified bank notes.

**11.** We further, notes that the Central Board of Direct Taxes had issued a Circular for the guidance of the Assessing Officer to verify cash deposits during demonetization period in various categories of explanation offered by the assessee and as per the Circular of the CBDT, examination of business cases, very important points needs to be considered is analysis of bank accounts, analysis of cash receipts and analysis of stock registers. From the Circular issued by the CBDT, it is very clear that, in a case where cash deposit found in business cases, the Assessing Officer needs to verify the explanation offered by the assessee with regard to realization of debtors where said debtors were outstanding in the previous year or credited during the year etc. Therefore, from the Circular issued by the CBDT, it is very clear that, while making additions towards cash deposits in demonetized currency, the Assessing Officer needs to analyze the business model of the assessee, its books of account and analysis of sales etc. In this case, we have gone through the analysis furnished by the assessee in respect of total business receipts from pawn-broking, realization from debtors and cash deposits during financial year 2015-16



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& 2016-17 and there is no significant change in cash deposits during demonetization period. Therefore, we are of the considered view that when there is no significant change in cash deposits during demonetization period, then merely for the reason that the assessee has accepted specified bank notes in violation of circulation/notification issued by Government of India & RBI, the source explained for cash deposits can't be countenanced.

**12.** It is noted that the assessee has given all the financials for the earlier years and subsequent years which doesn't shows that deposits of SBNs when compared with earlier years was comparatively suspicious; and as noted supra, the assessee has explained the *nature and source* of SBNs deposited in the bank to the tune of Rs.27,46,600/- as his business income, which was his cash-in-hand a day prior to demonetization; and the assessee has paid the tax on the business/interest income from the borrowers/business; and it is noted that the stock-in-trade has moved out of assessee's books of account; and the AO hasn't found any infirmity in the books of accounts of the assessee and didn't reject the books. When the sales has been reflected in the books of accounts and offered to tax, adding the same would amount to double taxation which is impermissible in law. The books are subjected to Tax Audit u/s 44AB and the assessee has maintained quantitative details of the stock-in trade. The cash sales



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proceeds have been credited in the books of accounts and the same form part of assessee's cash book. Thus, the assessee having discharged the burden to prove the nature and source of cash/SBNs deposited during the demonetization period which was his business receipts from pawn-broking, therefore addition u/s 69 of the Act wasn't warranted, unless, there was some material to hold otherwise, which AO/Ld CIT(A) failed to bring on record. Therefore, on the basis of facts discussed supra, and reasons cited supra, we set aside the impugned order of the Ld.CIT(A) and direct the deletion of addition of Rs.27,46,600/-.

**13.** In the result, appeal filed by the assessee is allowed.

Order pronounced on the 18<sup>th</sup> day of September, 2024, in Chennai.

**Sd/-**  
(अमिताभ शुक्ला)  
(AMITABH SHUKLA)

लेखा सदस्य/ACCOUNTANT MEMBER

**Sd/-**  
(एबी टी. वर्की)  
(ABY T. VARKEY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 18<sup>th</sup> September, 2024.

**TLN, Sr.PS**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF