



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK 'SMC' BENCH, CUTTACK**

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

ITA No.277/CTK/2024
Assessment Year : 2017-18

Malay Kumar Patra, Kunjabangarh, Nayagarh-752084	Vs.	ITO, Khurda Ward, Khurda
PAN/GIR No.AMGPP 1114 J		
(Appellant)	..	(Respondent)

Assessee by : Shri P.R.Mohanty, Adv
Revenue by : Shri S.C.Mohanty, Id Sr DR

Date of Hearing : 25/09/2024
Date of Pronouncement : 25/09/2024

ORDER

This is an appeal filed by the revenue against the order of the Id Addl/JCIT(A)-9, Mumbai dated 26.4.2024 in Appeal No.CIT(A),Bhubaneswar -1/14451/2019-20 for the assessment year 2017-18.

2. Shri P.R.Mohanty, Id AR appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is an individual, who is doing business in dealing with biscuits and Nestle food products. It was the submission that the assessee during the period of demonetization between

8.11.2016 to 11.11.2016 deposited SBN currency to an extent of Rs.4,65,000/-. The Assessing Officer treated the deposits made on 8.11.2016 to an extent of Rs.1,32,673/- as out of cash availability and treated the balance of Rs.3,32,327/-, which was deposited on 11.11.2016 as the unexplained income of the assessee. It was the submission that the cash availability as on 9.11.2016 has been recorded by the Assessing Officer as Rs.1,32,67/-. It was the submission that the balance monies were out of sales, which had already been made on credit. It was the submission that the assessee is a dealer in food products and once the food products are sold and if the assessee had not taken the money from the customers, who had purchased the products on credit, the assessee would lose that amount. It was the submission that if this amount of Rs.3,32,327/- is treated as unexplained income of the assessee, then the stock book of the assessee would get affected. It was the submission that the demonetization had taken place on 8.11.2016 and 9.11.2016 was holiday and the money had been deposited on 11.11.2016. It was the submission that no addition on account of the demonetization currency was liable to be made in the hands of the assessee. It was the specific submission that after 11.11.2016, no SBN currency had been deposited by the assessee. It was also agreed that the deposits in the bank account were clearly out of the cash availability in the books of account of the assessee as on 11.11.2016 and this has also been accepted by the Assessing Officer.

4. In reply, Id Sr DR vehemently supported the order of the Id CIT(A). He relied upon the decision of the Co-ordinate Bench of this Tribunal in the case of Pankaj Gupta in ITA No.66/CTK/2023 order dated 16.5.2023, wherein, the Co-ordinate Bench has confirmed the addition of the deposits of Rs.28 lakhs of SBN currency, especially when the cash book showed cash availability of Rs.252.40.

5. I have considered the rival submissions. A perusal of the facts in the present case clearly shows that there is adequate cash available in the cash books of the assessee as on the date of deposits. The cash deposit has been done within three days from the date of demonetization. The Assessing Officer has also agreed that the assessee had adequate cash as recorded in the cash book on the date of deposits in the bank account. It is also an admitted fact that the assessee is a dealer in food products. If the products are sold, it would not be recoverable especially when they are wholesale. There is no evidence produced to show that the assessee has done any purchase and sale in SBN currency after the date of demonetization. This being so, I am of the view that the decision relied upon by Id Sr DR in the case of Pankaj Gupta (supra) does not apply to the facts of the assessee's case and the assessee has successfully explained the deposits of SBNs in his books of account. Consequently, same cannot be treated as unexplained income of the assessee. Accordingly, I delete the addition made by the Assessing Officer and confirmed by the Id CIT(A).

6. In the result, appeal of assessee stands allowed.

Order dictated and pronounced in the open court on 25/09/2024.

Sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 25/09/2024

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Malay Kumar Patra,
Kunjabangarh, Daspalla, Nayagarh-752084
2. The respondent: ITO, Khurda Ward, Khurda
3. The Addl/JCIT(A)-9, Mumbai
4. Pr.CIT, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.

//True Copy//

By order

Sr.Pvt. Secretary
ITAT, Cuttack

IMPARTIAL, EASY AND
SPEEDY JUSTICE