

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri Waseem Ahmed, Accountant Member &
Shri Soundararajan K, Judicial Member**

ITA No.689/Coch/2023 :Asst.Year2017-2018
SA No.156/Coch/2023

Sri.Anilkumar Sukumaran Kottilappattu, Keerikkadu Ramapuram Alappuzha – 690 508 PAN :BBTPS9615J.	v.	The Assistant Commissioner of Income-tax, Circle Alappuzha.
(Appellant/Applicant)		(Respondent)

Appellant/Applicant by :Sri.Suresh Kumar Varma, CA
Respondent by :Smt.Girly Albert, Sr.DR

Date of Hearing :23.09.2024	Date of Pronouncement : 26.09.2024
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ORDER

Per Bench :

This assessee's appeal ITA No.689/Coch/2023 (alongwith its stay application SA No.156/Coch/2023 therein) for assessment year 2017-2018 arises out of the order of the Commissioner of Income-tax (Appeals) / NFAC vide DIN & Order No.ITBA/NFAC/S/250/2023-24/1054861618(1) dated 04.08.2023 in the proceedings u/s143(3) of the Income-tax Act, 1961; in short "the Act" hereinafter.

2. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs.25,00,000 representing cash deposits in bank during demonetization period u/s 69 of the Act.

3. In the instant case, the assessee has deposited cash in the bank amounting to Rs.28,50,000 in SBN which were no longer legal tender after the demonetization scheme pronounced on 08th November, 2016. Accordingly, the Assessing Officer was of the view that such cash deposits represent an unexplained investment and therefore added the same to the total income of the assessee.

4. Aggrieved, the assessee preferred an appeal before the learned CIT(A). The assessee before the learned CIT(A) contended that there was cash withdrawal prior to the demonetization period amounting to Rs.42,31,790, which was utilized for making the deposits in the bank during the demonetization period to the tune of Rs.28,50,000.00 only. However, the ld.CIT(A) disagreed with the contention of the assessee by observing that there was no co-relation between the cash withdrawal and the cash deposits so as to justify that the cash withdrawn on the earlier occasion was deposited in the bank. The ld.CIT(A) accordingly in the absence of sufficient documentary evidence, confirmed the order of the AO.

5. Being aggrieved by the order of the ld.CIT(A), the assessee is in appeal before us.

6. The ld. AR before us contended that source of money in the hands of the assessee was duly explained during the assessment/ appellate proceedings, but the same has been treated as unexplained money under section 69 of the Act

merely on the reasoning that after 8th of November 2016, the specified banknotes were no more legal tenders. The ld. AR in support of his contentions filed the analysis of cash withdrawal with the copy of capital account and bank statement placed on pages 74 to 80 of the PB. It was also submitted that in such facts and circumstances, various Tribunals have deleted the addition made by the revenue authorities. To this effect, the ld. AR before us drawn our attention to the orders of the ITAT which are there in the paper book.

7. On the other hand, the ld. DR before us vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, as per the revenue, the SBN were not the legal tender during the relevant time of demonetization period and therefore such currency was nothing but a piece of paper having no value. But the assessee by depositing such SBN in its bank account during the demonetization period has got the benefit of equivalent value in the new currency which was representing the unexplained money of the assessee and therefore the same was added under the provisions of section 69 of the Act.

9. It is the admitted position that the specified bank notes (cessation of liabilities) Act 2017 provides that no person shall

knowingly or voluntarily hold, transfer, or receive any specified bank note on and from the appointed date i.e. 31st day of December 2016. Before 31st December 2016 i.e. between 9th November 2016 to 31st December the banks, and other institutions such as petrol pumps, hospitals, and Government Department were allowed to accept SBN with certain restrictions. In other words, up to the appointed date, the Government of India and RBI were bound to exchange the SBN once they are tendered for exchange until 30th December 2016. Accordingly, such SBN cannot be treated as just a piece of paper having no value on or after 9 November 2016 as alleged by the revenue. We also find that the Chennai Tribunal in the case of Raju Dinesh Kumar v. DCIT reported in 159 taxmann.com 1598 involving identical facts and circumstances has held as under:

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 [IT Appeal No. 808 (Chny) 2023, dated 11-10-2023],*

10. In view of the above and after considering the facts in totality, we hold that the SBN deposited by the assessee during the demonetization period cannot be treated as unexplained money under section 69 of the Act merely because the assessee deposited the same after announcement of demonetization scheme.

11. However, it is pertinent to note that the assessee is under the obligation to explain the source of money deposited during the demonetization period. In this regard, we note that the assessee has justified the source of deposits in the bank by contending that there was withdrawal from the bank on the earlier occasion which was supported by the analysis of the cash withdrawal with the copy of capital account and bank statement placed on pages 74 to 80 of the paper book. The revenue has not brought anything on record demonstrating that the cash withdrawn from the bank has been utilized by the assessee for some other purposes. Accordingly, we can draw a presumption that the cash withdrawn from the bank was available with the assessee which has been utilized for the purpose of deposit during the demonetization period. Therefore, we are inclined to set aside the finding of the Id. CIT-A with the direction to the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

12. Since the appeal is disposed of, the stay petition becomes filed by the assessee becomes infructuous, and the same is accordingly dismissed.

13. In the result, the appeal by the assessee is allowed and the stay petition is dismissed as infructuous.

Order pronounced on this 26th day of September, 2024.

Sd/-
(Soundararajan K)
JUDICIAL MEMBER

Sd/-
(Waseem Ahmed)
ACCOUNTANT MEMBER

Cochin ; Dated : 26th September, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT Concerned.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin