

आयकर अपीलीय अधिकरण, "ए" न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 1324/CHNY/2024

निर्धारण वर्ष /Assessment Year: 2017-2018.

Deepak V.  
Hardeep Motors,  
No.382, Triplicane High Road,  
Triplicane,  
Chennai 600 005.

v. The Assistant Commissioner of  
Income Tax  
Non Corporate Circe 10(1)  
Chennai

**PAN: AGNPD 0448A**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri B. Ramakrishnan, C.A.

प्रत्यर्थी की ओर से/Respondent by

: Ms. Deeptha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 01.10.2024

घोषणा की तारीख/Date of Pronouncement

: 09.10.2024

**आदेश /ORDER**

**PER MAHAVIR SINGH, VP:**

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in order No.ITBA/NFAC/S/250/2023-24/1063766968 (1) dated 31.03.2024. The assessment was framed by the Income Tax Officer, Non Corporate Ward 1(2), Chennai for the

assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 28.11.2019.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of Id. Assessing Officer in making addition of an amount of Rs.1,09,26,810/- being cash deposited during demonetization period in Specified Bank Notes (SBNs).

3. We have heard the rival contentions and perused the material on record. We noted that assessee is engaged in the business of trading in spare parts & accessories of Honda and selling of Honda two wheeler scooters & motorcycles and servicing of Honda two wheeler scooters and motorcycles. We noted that the Id. Assessing Officer during the course of assessment proceedings noted from ITS statement that the assessee has made huge cash deposits in various bank account in SBNs during demonetization period from 9.11.2016 to 30.12.2016 amounting to Rs.1,09,26,810/- detailed out in assessment order. As there was no response from the assessee as regards to source of cash deposits, the Id. Assessing Officer added the entire cash deposits of Rs.1,09,26,810/- deposited during demonization period as unexplained investment u/s.69 r.w.s.115BBE of the Act. Aggrieved, assessee preferred an appeal before the Id. CIT(A).

4. Before the Id. CIT(A), assessee stated that out of sum of Rs.1,09,26,810/-, a sum of Rs.11,06,000/- was the cash balance available with the assessee as on 8.11.2016. The balance cash of Rs.98,20,810/- was out of sale recorded in the

books of accounts of two wheelers in cash and it was stated that cash deposited into bank accounts during demonetization is from cash sales, loan repayment from debtors and from cash service receipts. The assessee before the Id. CIT(A) filed complete details and Id. CIT(A) has recorded these facts in his order at para 5.4 (d), (e) and (f) and (g) which reads as under:-

*'d) In light of the above fact, it is clear that appellant has deposited cash amounting to Rs.98,20,810/- during the demonetization period i.e from 09.11.2016 to 30.12.2016.*

*e) The appellant has claimed that he is in the business of wholesale and retail sale and services of two wheelers. It is noted that the appellant has been provided with numerous opportunities by the Assessing Officer during the course of assessment proceeding. It is also noted that assessee did not submit any details as desired through various notices by the Assessing Officer. During the course of appellate proceeding, the assessee did submit explanation and a documentary evidence in the form of confirmation from Didar Motors certifying that "the sales turnover of vehicles sold by Hardeep Motors is not reported in their books."*

*f) Further, the appellant has stated the same issue i.r.o cash deposit, i.e. the cash deposits are from the sources: loans received in cash, loan repayments received in cash, receipt of gift in cash, other receipts in cash.*

*g) It is pertinent to mention here that the business of the assessee, which is sales/ services of two-wheelers on wholesale and retail basis, had no exemption vide the RBI notification no S.O.3408(E) dated 08th Nov 2016 and notification no. S.O. 3544(E) dated 24.11.2016. Accordingly, the undersigned is tended to conclude that, as the assessee was not one of the entities authorized by the Central Government to accept SBNs during demonetization period in exchange for goods/services".*

But Id. CIT(A) has not accepted the explanation of cash deposits made during demonetization period in SBNs amounting to Rs.98,20,810/- and accepted cash balance available in the bank account of Rs.11,06,000/- by observing as under:-

*'h) Further, as the assessee had deposited the SBNs held by it in to its bank account, and since the Notification in S.O.No. 3408(E) dt. 08-11-2016 issued by the Central Government had withdrawn the legal tender status of SBNs w.e.f 09-11-2016 but permitted the deposit of such SBNs held by a person into his bank*

*account, the SBNS deposited in bank during demonetization period by the assessee represents the SBNS held by the assessee as on 08.11.2016 and the onus is on the assessee/ appellants to prove the sources for such SBNS.*

*i) In view of the above discussion, out of the total cash deposits of Rs. 1,09,26,810/- in alleged SBNS, the deposit of Rs.11,06,000/- dated 08.11.2016, is being treated out of demonetization period. The balance amount of Rs.98,20,810/- i.e. the cash deposited by the appellants during the period of demonetization is being treated as unexplained and hence, the addition made by the AO is upheld upto the amount of Rs.98,20,810/- subject to the direction contained in para 5.4.(c) of the order'.*

The Id. CIT(A) confirmed the action of the Id. Assessing Officer to the tune of Rs.98,20,810/-. Aggrieved, the assessee is in appeal before the Tribunal.

5. We noted that in this case assessee has explained the source of cash deposit arising out of sale of two wheelers, loan repayment from debtors and service receipts received in cash. The assessee filed complete details in paper book consisting of 1 to 213 pages. We have already considered this issue in favour of the assessee in the case of *Tamil Nadu State Marketing Corporation Ltd vs. Assistant Commissioner of Income Tax, Chennai in ITA No.431/Chny/2023 for assessment year 2017-2018 dated 07.10.2024*, wherein it was held as under:-

*"8.4 We have gone through the notifications issued by the RBI and Government of India, to deal with specified bank notes. The only premise of the Revenue is mainly on the issue of notification issued by the RBI to deal with the specified bank notes and argument is that the assessee is not one of the eligible person to accept or to deal with specified bank notes and thus, even if assessee furnish necessary evidence, the assessee cannot accept specified bank notes after demonetization and the explanation offered by the assessee cannot be accepted. No doubt specified bank notes of Rs. 500 & Rs. 1000 have been withdrawn from circulation from 09.11.2016 onwards. The Government of India and 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 31.12.2016. 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 31.12.2016. Therefore, there is no clarity on how to deal with demonetized currency from the date of demonetization and up to 31.12.2016. Therefore, under those circumstances, some persons continued to accept and transact the specified bank notes and deposited into bank accounts. Therefore, merely for the reason that there is a violation of certain notifications/GO issued by the Government in transacting with specified bank notes, the genuine explanation offered by the assessee towards source for cash deposit cannot be rejected, unless the AO makes out a case that the assessee has deposited unaccounted cash into bank account in specified bank notes.*

*8.5 We further noted that the Central Board of Direct Taxes had issued a circular for the guidance of the Revenue 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 AO 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 AO needs to analyze the business model of the assessee, its books of account and analysis of sales etc. In this case, if we go by analysis furnished by the assessee in respect of total sales, cash sales including the cash received in demonetized currency and cash deposits, there is negligible amount in demonetized currency. 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 circular/notification issued by Government of India and RBI, the source explained for cash deposits cannot be rejected. Simpliciter violation of certain notification issued by RBI or demonetization scheme announced by Government of India on 08.11.2016 will not entitle the Revenue to make addition u/s.69 or 69A of the Act. Because, the mandate of the provisions of Section 69 & 69A of the Act, i.e., unexplained investments and unexplained money etc., may be deemed to be the income of the assessee for the financial year relevant to assessment year concerned, in which the assessee is found to be the owner of such money, bullion, jewellery or valuable article or unexplained expenditure, if, the such expenditure or such money etc., are not recorded in the books of accounts, if any, maintained by assessee for any source of income and the assessee offers no explanation about the nature and source of such expenditure or acquisition of such money, etc., or the explanation offered by him, in the opinion of AO is not satisfactory. For violation of any RBI notification, etc., can have any civil or criminal liability and can be dealt with under any other provision of law by the concerned authority but for the purpose of bringing the amount under Income-tax, the provisions are very clear i.e., 69 & 69A of the Act. In our*

*considered view, to bring any amount u/s. 69 or 69A of the Act, the nature and source of investment, needs to be examined. In case the assessee explains the nature and source of investment, then the question of making addition towards unexplained investment u/s. 69 of the Act does not arise. In this case, the source of deposits has not been disputed and has been created out of ordinary business sales which has been credited into books of accounts and profits has also been duly included in the return of income filed in relevant assessment year. Therefore, we are of the considered view that, additions cannot be made u/s. 69 of the Act and taxed u/s. 115BBE of the Act towards cash deposits made to bank account of demonetized cash in SBNs”.*

Since the issue is squarely covered by the decision of the Co-ordinate Bench of the Tribunal in the case of *Tamil Nadu State Marketing Corporation Ltd (supra)*, we allow the ground raised by the assessee and delete the addition made by the lower authorities.

6. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 9th day of October, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 9th October, 2024.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT