

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.351/CHNY/2024

निर्धारण वर्ष /Assessment Year:2017-2018

Vasanth & Co
SF No.1308, Anna Nagar,
K P N Colony Extn,
Tirupur 641 601.

v. The Income Tax Officer,
Ward 1(2)
Tirupur 641 601.

PAN: AABFV 6669F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Yeshwanth Kumar, 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/250/2023-24/1058720698(1) dated 13.12.2023. The assessment was framed by the Income Tax Officer, Ward 1(2), Tirupur, for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 28.12.2019.

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 cash deposits of Rs.70,68,500/- as unexplained money u/s.69A of the Act being cash deposited in bank during demonetization period in Specified Bank Notes (SBNs).

3. Brief facts of the case are that assessee is engaged in selling of fast moving consumer goods by taking distribution of M/s. Hindustan Unilever Limited, M/s Britannia Industries Ltd, M/s. Kalleesuwari Refinery Private Limited etc. Assessee case was selected for scrutiny under CASS to verify large cash deposits made during demonetization period in Specified Bank Notes (SBNs). The Id. Assessing Officer during the course of assessment proceedings enquired the assessee to explain the source of cash deposits made in SBNs. The assessee explained that the cash deposits is made out of sale proceeds and realization of debtor during demonetization period. The Id. Assessing Officer rejected the assessee's explanation by observing in para 3 & 4 as under:-

'3. The Government of India, in the Ministry of Finance, Department of Economic Affairs number S.O.3408(E) dated 8th November, 2016 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 8th November, 2016 declares that the legal tender character of denominations of Rs.500 and Rs.1000 stands withdrawn with effect from the midnight of November 8, 2016 called as SBN (specified Bank Notes). The Government of India on its further notification allowed certain services for accepting the SBN of Rs.500 till specific period. The assessee's business does not fall under exempted category for the extended specific period, The assessee, in his reply filed through e-proceedings, explained that the collections made from customers towards sale proceeds and realisation of debtors as the source for the cash deposits made in the bank account during the demonetisation period. The acceptances of old SBN from customers after demonetisation cannot be explained as source for the cash deposits in the bank account during demonetisation period since the old SBN are no longer a legal tender w.e.f. 09.11.2016.

4 The assessee has also referred The Gazette of India, Extraordinary PART-II-Section 1 issued by Ministry of Law and Justice under The Specified Bank Notes (Cessation of Liabilities) Act, 2017 dt.28th February, 2017 which states that the prohibition on holding, transferring or receiving specified bank notes shall be prohibited with effect from appointed day i.e 31.12.2016 as per para 5 of the Gazette. By quoting this Gazette, the assessee firm claimed that the acceptance of old currency i.e SBN during demonetisation was not prohibited till 30.12.2016”.

Aggrieved assessee preferred an appeal before the Id. CIT(A).

4 The Id. CIT(A) also confirmed the action of the Ld. Assessing Officer. Aggrieved the assessee is in appeal before us.

5. We have heard the rival contentions and perused the material on record. The assessee before us explained that they are in the business of distribution of FMCG products and are the authorised distributor for M/s. Hindustan Unilever Limited, M/s. Britannia Industries Ltd and M/s. Kalleesuwari Refinery Private Limited etc. They purchase in wholesale from the manufacturers and sell them to retail outlets spread over their area of operation. Payments are collected from them either on the same day of sales are in due course. Irrespective of their collection, assessee has to make payments to our suppliers. The Turnover of the assessee for the last three years are as under:

Financial Year 2014-15	43.44 crores.
Financial Year 2015-16	48.17 crores
Financial Year 2016-17	57.93 crores

Assessee is constantly maintaining an average sale of 4 to 5 crores per month and their gross profit ratio is very low and therefore they will not be able to extend much of credit to their customers as the same will eat out on their Return on Investments. Assessee's customers range from departmental stores to small petty shops and assessee is supposed to cater to all the shops within the area as their principles want the penetration of their product fully in the market. Amounts were received by Cheques/Bank transfers from big customers and in cash from smaller shops. When demonetization was announced there was a scarcity of Quid cash in non-demonetised currencies. Smaller traders had to accept payments from their customers in demonetised and non-demonetised currencies as well because of the fact that non-acceptance will lead to a fall in sales and put their customers into hardship. The traders in turn started making payments in demonetised currencies to assessee which forced them to accept in order to maintain a smooth working capital cycle. Assessee also enquired with their bankers regarding the same, who in turn advised that they will be accepting payments up to 30th December, 2016. Based on this, assessee was under the bonafide belief that acceptance of cash in demonetised form from identifiable customers is permitted and therefore assessee were accepting from such customers for a few days. As soon as assessee came to know that only specified persons can accept demonetised currency they stopped

receiving the same. The amount received during the initial few days were remitted to the bank account. This was the reason for acceptance of the demonetized currency to the tune of Rs.51,05,940/- from their customers, which were remitted in to account then and there. Going by the explanation of the assessee that the cash deposited in SBNs during demonetization period is out of sale proceeds and this issue stands covered in favour of the assessee by the decision of the Co-ordinate of the Tribunal 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 and 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

