

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं  
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष  
BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND  
HON'BLE SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.802/Chny/2022  
निर्धारण वर्ष /Assessment Year: 2017-18

Muthalif Moideen,  
104, Demonte Street,  
Tirupur 641 604.

The Dy. Commissioner of Income Tax,  
Vs. Circle-1(1),  
Tirupur

[PAN ADWPM 2599P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri. M. Muruga Boopathy, Advocate  
: Dr. Samuel Pitta, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 23.09.2024.

घोषणा की तारीख /Date of Pronouncement

: 09.10.2024

आदेश / ORDER

PER MANU KUMAR GIRI, J.M. :

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), (NFAC), Delhi [hereinafter "CIT(A)"] in DIN & Order No. ITBA/NFAC/S/250/2022-23/104551027 (1), dated 08.08.2022. The assessment was framed by the Assessing Officer for the Assessment Year 2017-18 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 30.12.2019.

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2. The solitary ground raised by the assessee before us is, the Id. CIT(A) has erred in confirming the addition of cash deposit in SBNs of Rs.2,41,46,500/- u/s.68 r.w.s. 115BBE of the Act as unexplained income.

3. The brief facts are that, the assessee is an individual and is in the business of trading in chappals and shoes. The assessee filed his return of income for the assessment year 2017-18 on 19.03.2018, admitting an income of Rs.22,65,890/-. The case was selected for scrutiny under CASS. Accordingly, notices u/s. 143(2) and 142(1) of the Act were issued to the assessee calling for details of cash deposits during demonetization period. In response to notices, the assessee submitted details of statement of total income, trading and profit & loss account, balance sheet, audit report, copy of VAT returns and explained the cash deposits.

4. During the course of the assessment proceedings the AO noted that the assessee has deposited Rs.2,60,27,500/- in SBNs during demonetization period against the cash balance held as on 08/11/2016 of Rs.18,81,217/-. The Assessee explained before the AO that the cash deposit made was out of business receipts and stated as below:

*"I wish to submit that I am a dealer of VKS brand chappal and shoes. I purchase goods from VKC group of companies and sell it to various retailers (around 500 Nos, including street vendors). I am selling the Chappais in retail also. All the purchases are made by me only through banking channels (Cheque/DD/RTGS). In respect of sales at about 75% of my customers are small retailers from whom I could collect cash money directly almost on daily basis. Normally, there would be more than 20 lakhs rupees cash balance in hand in all days throughout the year. The cash balance would be on higher side during*

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*the Festival season and during the School opening months (May/June). All the money collected by my staffs who are roaming around Tamilnadu would be deposited in my bank account at frequent intervals either at Salem or at Tirupur.*

*My average monthly cash collection is around Rs.2 crores during the period from 1.4.2016 to 31.10.2016. Similarly my average monthly cash deposit is around Rs. 2 crores during the period from 1.4.2016 to 31.10.2016. Hence it is evident from the above that the Cash collection for my sales is my usual trade practice which is unavoidable.*

*I wish to bring to your kind attention that during the demonetisation period, I have deposited Rs 3.54 Crores(at an average of 1.77 crores per month) which were as in the pre-demonetization'.*

However, the Ld. AO was not satisfied with the explanation furnished by the assessee and accepted the cash balance held on 08.11.2016 of Rs.18,81,217/- as explained and the balance amount of Rs.2,41,46,500/- was brought to tax u/s. 68 r.w.s. 115BBE of the Act and completed the assessment u/s.143(3) of the Act on 30.12.2018, holding as under:

*" The assessee's reply is considered but it is seen that the source for excess deposit of SBNs when compared to the cash in hand on 08.11.2016 has not been satisfactorily established. The assessee claims to have accepted cash in the form of Specified Bank Notes during the demonetisation period, i.e, 09.11.2016 to 31.12.2016 from his retail customers. This is in violation of the notification of Reserve Bank of India in No.RBI/2016-17/112 of DCM(Plg) No.1226/10.27.00/2016-17 dated 08.11.2016, which notified as under:*

*"In terms of Gazette Notification No.2652 dated 08.11.2016 issued by the Government of India, Rs.500 and Rs. 1000 denominations of Bank Notes of the existing series issued by Reserve Bank of India (hereinafter referred to as Specified Bank Notes) shall cease to be legal tender with effect from November 09, 2016, to the extent specified in the Notification."*

*Subsequently, the Reserve Bank of India has notified exemptions w.e.f. 09.11.2016 to 11.11.2016 for convenience of public in carrying out certain emergent and using Specified Bank Notes vide Notification No.SO 3416(E) [F.No. 10/03/2016-C.Y.1], dated 09.11.2016 and contents of the notification are as under:*

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*In exercise of the powers conferred by sub-section (2) of section of the Reserve Bank of India Act, 1934(2 of 1934), the Central Government hereby amends the notification of the Government, Ministry of Finance, Department of Economic Affairs number S.No.3408(E) dated the 8th November, 2016 published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (ii) dated the 8th November 2016, namely:*

*1. In the said notification, in paragraph 1, after clause (h), the following clauses shall be inserted, namely:-*

*"(i) for making payments in all pharmacies on production of doctor's prescription and proof of identity:*

*(j) for making payments on all toll plazas on the State and National Highways;*

*(k) for payments on purchases LPG gas cylinders,*

*(j) for making payments to catering services on board, during travel by rail;*

*(m) for making payments for purchasing tickets by suburban and metro rail services;*

*(n) for making payments for purchase of entry tickets for any monument maintained by the Archeological Survey of India".*

*From the above notification of the Reserve Bank of India, it is clear that persons engaging in the sale of footwear are not authorised to accept the Specified Bank Notes from 09.11.2016 onwards. Hence in the case of assessee, acceptance of Specified Bank Notes (SBN) after 08.11.2016 is not acceptable as the SBNs are not legal tender from 09.11.2016.*

*Addition under section 68 of Income tax act:*

*Section 68 of Income tax Act read as follows:*

*"Where any sum is found credited in the books of the assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."*

*As discussed in the earlier paragraphs, a person engaged in the sales of footwear is not permitted to receive the cash in Specified Bank Notes after 08.11.2016, which means, only cash in hand as on 08.11.2016 could be deposited into banks upto 30.12.2016. In the case of the assessee, he had deposited Rs. 2,60,27,500/- as Specified Bank Notes during the demonetisation period. Since the legal tender character of SBNs was withdrawn on 08.11.2016, the assessee had neither the legal obligation nor the authority to accept SBN notes from 09.11.2016. After considering the cash in hand as on 08.11.2016, it is concluded that the difference between SBNs deposited during demonetisation period (Rs. 2,60,27,500/-) and the cash in hand on 08.11.2016 (Rs.18,81,000/-). amounting to Rs. 2,41,46,500/-, is from unexplained sources and is added to his returned income as unexplained cash credits u/s 68 of the IT Act, 1961.*

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After verification of details furnished by the assessee, the assessment is completed for the A.Y.2017-18 as under:

<i>Returned Income</i>	<i>Rs. 22,65,890/</i>
<i>Add: Unexplained Cash Credits u/s 68</i>	<i>Rs. 2,41,46,500/-</i>
<i>Assessed Income</i>	<i>Rs.2,64,12,390/</i>

4. Aggrieved by the impugned order, the assessee preferred an appeal before the Id.CIT(A). Before the Id.CIT(A), the assessee reiterated that the business of trading in chappals and shoes was carried out and the deposits made during the assessment year was out of sale proceeds, collection from debtors/retailers. The assessee furnished purchase bills, sales register, cash book and demonstrated that the cash was deposited in SBN was out of sales proceeds and collection from the debtors/retailers. The assessee challenged the addition U/s.68 of the Act for the following reason:

*- Rs. 2,41,46,500/- being the difference between cash deposits during demonetisation period of Rs.2,60,27,500/- and cash balance on Rs.18,81,217/- and*

5. The action of the AO is patently wrong, since the assessee had filed all the details electronically and they are examined. It is pertinent to note that no finding with respect to any defect in the books of accounts given in the impugned order. It is important to note that there is no abnormal changes in total turnover and cash deposits of the assessee in the immediate previous year and subsequent financial year and in the impugned year. When the accounts of the assessee were not found to be defective,

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the additions made is required to be deleted and relied on the following decisions:

- *134 Taxmann.com 256 (Del) or 441 ITR 550*
- *189 ITD 608 (Vizag Tribunal) and*
- *ITA No.76/Vizag/2021 dated 16/03/2022.*

6. Considering the assessee's submissions, the Ld. CIT(A) confirmed the addition of Rs.2,41,46,500/- holding as under:

*'5.1.1 These grounds relate to challenging the findings of AO, where the AO has treated cash deposit of Rs.2,41,46,500/- as unexplained in terms of section 68 of I.T. Act.*

*5.1.2 I have considered the submission of the assessee, gone through AO's order and given a careful thought. The solitary issue involved in impugned case is regarding source of cash deposit of Rs.2,41,46,500/- in the bank account during the demonetization period. Admittedly, in impugned case, cash balance in Specified Bank Notes in assessee's cash book was at Rs.18,81,217/- on 08.11.2016 i.e. the date on which demonetization was announced or implemented. During the assessment proceeding as well as in appeal proceeding, the appellant has not been able to bring on record to substantiate its claim regarding cash of Rs.2,60,27,500/- was lying with him as on 08.11.2016. Admittedly, in impugned case, the assessee has been engaged in manufacturing and sale of chappals and shoes, where cash sale is quite prevalent, however, it is also admitted that the assessee has been maintaining regular books of account as required under the law. The cash book is one of the books of account maintained, where, updated cash book disclosed cash balance with the assessee as on 08.11.2016 to the extent of Rs. 18,81,217 only in place of Rs.2,60,27,500/-. No cogent material or evidence are brought on record to negate the claim of the AO regarding unproved source of cash deposit of Rs.2,41,46,500/-. Therefore, the oral explanation of the assessee, cannot be accepted, without having any cogent material and evidence on record. As a result, grounds of appeal nos. 1 to 13 are dismissed".*

Aggrieved by the impugned order of the Id.CIT(A), the assessee preferred an appeal before us.

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7. The Ld. Counsel for the assessee, assailed that the Id.CIT(A) erred in sustaining the addition made u/s. 68 r.w.s. 115BBE of the Act, even though the assessee has filed all the relevant documents and details to prove its case. The Ld. Counsel for the assessee, stated that the assessee maintained proper books of accounts, stock records and have been furnished during the assessment proceedings. The assessment was concluded by the Assessing Officer without finding any defect in the books of accounts presented and accepted the same. The Ld.AR further stated that the Ld.CIT(A) erred in not considering the scope and overriding effect of the Specified Bank Notes (cessation of liabilities) Act, 2017, more particularly the meaning and effect of the "Appointed day" under the Act and in support of the same he relied on the following decisions of the Tribunal:

- *ITA No. 527/Chny/2022 dated 14/10/2022*
- *ITA No. 557/Chny/2022 dated 04/01/2023*
- *ITA No. 264/Chny/2023 dated 26/07/2023*
- *ITA No. 808/Chny/2023 dated 11/10/2023*
- *ITA No. 1321/Chny/2023 dated 19/01/2024*
- *ITA No. 1128/Chny/2023 dated 28/02/2024*
- *ITA No. 1359/Chny/2023 dated 03/07/2024*

In light of the above argument the Id.AR prayed for deleting the addition made by the Ld.CIT(A).

8. Per contra, the Id. DR, on the other hand relied on the actions of the Assessing Officer and the Id. CIT(A), after considering the submissions has rightly confirmed the addition of cash deposits made during the

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demonetisation period which was collected from debtors and from sales proceeds as it was not a legal tender and was prohibited to transact for any of the transactions by general public and hence the order of the Ld.CIT(A) should be upheld. In support of the Id.CIT(A) order, the Ld.DR relied on the following decision of the Chennai Tribunal in ITA No.698/Chny/2022 dated 07/02/2023 in the case of Vidhiyasekaran Pradeep Malliraj Vs.ITO.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The fact with regard to the impugned dispute are that the assessee has deposited a sum of Rs.2,41,46,500/- in specified bank notes during demonetization period to his bank account beyond the cash balance held on 08/11/2016. It is admitted from the records that the assessee is engaged in trading business of Chappals and shoes. The case was selected for scrutiny to verify the source for cash deposited and called for certain details. The assessee deposited cash of Rs.2,60,27,500/- after announcement of demonetization by Government of India. Out of which the assessee shown cash balance on 08/11/2016 of Rs.18,81,217/- and hence the difference amount of Rs.2,41,46,500/- considered as specified bank notes collected during demonetization period and deposited to his bank account, thereby confirmed the addition by Ld.CIT(A) U/s.68 of the Act made by the AO. The assessee deposited cash out of sale proceeds and collection from sundry debtors / trade debtors. In response to notice u/s. 142(1) of the Act, the

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assessee had furnished cash book, sales register, purchase register, bank statements. The assessee has maintained proper books of accounts which are subjected to tax audit u/s. 44AB of the Act. The books of accounts of the assessee have been accepted by the lower authorities while framing the assessment and not rejected by pointing out any defects.

10. On perusal of the records and facts and circumstances of the case, we are of the considered opinion that when the sales has been reflected in the books of accounts and offered to tax, adding the same again would amount to double taxation, which is impermissible in law. The cash sales / collections made from debtors/retailers by the assessee have been credited in the books of accounts and the same form part of the assessee's cash book. On these facts, it could be very well said that the assessee's claim was backed up by relevant evidences. Thus, the assessee has discharged the burden of proving the source of the cash/SBN deposited in the bank and the Assessing Officer failed to rebut the same. The allegations/statistics relied upon by Assessing Officer to take an adverse view is not backed up by relevant evidence/material and therefore the impugned action of authorities below cannot be countenanced. Moreover, since cash generated out of sales / collection from debtors/retailers has been recorded in the books of accounts, the provisions of section 68 could not be invoked in the present case.

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11. As regards, the objection on legal tender of Specified Bank Notes on or after 08.11.2016, we find that as per the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016, which came into effect from 31.12.2016 appointed date for this purpose means 31.12.2016. Further, as per Section 5 of said Ordinance, from the appointed date, no person shall, knowingly or voluntarily, hold or transfer or receive any Specified Bank Notes. From the above what is clear is that up to the appointed date i.e.31.12.2016, there is no prohibition for dealing with Specified Bank Notes. Therefore, in our considered view, the objection of the Ld.CIT(A) and that of AO on this issue in light of said Act is devoid of merits. Further, the Ld.AR relied on the following decisions of the Tribunal has addressed the similar issue in favour of the assessee.

- *ITA No. 527/Chny/2022 dated 14/10/2022*
- *ITA No. 557/Chny/2022 dated 04/01/2023*
- *ITA No. 264/Chny/2023 dated 26/07/2023*
- *ITA No. 808/Chny/2023 dated 11/10/2023*
- *ITA No. 1321/Chny/2023 dated 19/01/2024*
- *ITA No. 1128/Chny/2023 dated 28/02/2024*
- *ITA No. 1359/Chny/2023 dated 03/07/2024*

The Tribunal after considering relevant provision of Specified Bank Notes (Cessation of Liabilities) Act, 2017, held that there is no prohibition under the Act to deal with Specified Bank Notes up to 31.12.2016.

12. Therefore, on the given facts and respectfully following the orders of Co-ordinate Bench of this Tribunal, the impugned addition is not sustainable

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in the eyes of law and hence, the same is deleted by allowing the ground raised by the assessee.

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

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

Sd/-

एस.आर. रघुनाथा

(S.R. RAGHUNATHA)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई/Chennai, दिनांक/Dated: 9th October, 2024.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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