

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1232/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

M/s.Sqny Fireworks Industries, 74, Velayutham Road, Sivakasi – 626 123. [PAN: ABFFS 5604 J]	v.	The ITO, Ward-3, Virudhunagar.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr. V. Rajasekaran, CA
प्रत्यर्थी की ओर से /Respondent by	:	Ms. R. Anita, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	05.09.2024
घोषणाकीतारीख /Date of Pronouncement	:	09.10.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short 'the Ld.CIT(A)'), Delhi, dated 15.03.2024 for the Assessment Year (hereinafter in short 'AY') 2017-18.

2. The main grievance of the assessee is against the action of the Ld.CIT(A) confirming the addition of Rs.49,65,799/- u/s.69A of the Income Tax Act, 1961 (hereinafter in short 'the Act') regarding the



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Specified Bank Notes (hereinafter in short 'SBN') deposited during demonetization period.

3. The brief facts of the case are that the assessee as name suggests is in the business of Fireworks viz purchase and sale of crackers/fireworks; and assessee filed its return of income (RoI) for AY 2017-18 on 29.03.2018 admitting total income of Rs.9,19,180/-; and the RoI was later selected for scrutiny under CASS mainly to verify the nature & source of cash deposits made during demonetization period. The AO noted that during the year assessee had deposited SBNs of Rs.68,15,600/- after 08.11.2016 (demonetization period). So, the AO asked the assessee to explain the *nature and source* of the cash/SBN's deposited; and the assessee explained that out of the said amount Rs.18,49,901/- was cash available as on 08.11.2016 and the balance of ₹50,76,593/- was received from the debtors who had purchased the fireworks on credit-basis during Diwali festival that was celebrated Pan-India on 30.10.2016 in the relevant year. The AO verified and found that Rs.18,49,901/- was closing balance as on 08.11.2016, which he accepted. But in respect of balance amount of ₹50,76,593/-, even though the assessee filed the name/details of the customers/debtors from whom assessee retrieved the sale-receipts and also filed the financials (P & L A/c, audited books, balance sheet and other details); and despite the AO acknowledged that assessee had furnished the list of debtors from whom



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the collections were said to have been received but found fault for non-filing of confirmation from the respective debtors/parties and non-furnishing of details of return of income filed by them i.e., debtors. And considering the fact that the assessee firm is not exempted from receiving the bank currency/SBN's of Rs.49,65,799/-, he added it u/s.69A of the Act.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the action of the AO on the same reasoning as given by the AO.

5. Aggrieved, the assessee is in appeal before this Tribunal.

6. We have heard both the parties and perused the material available on record. We note that the assessee is engaged in the business of purchase and sale of fireworks, and had filed return of income offering Rs.9,19,180/-; and the AO noted that the assessee has deposited SBNs to the tune of Rs.68,15,600/- during the demonetization period, and the AO accepted the closing cash-balance as on 08.11.2016 to the tune of Rs.18,49,901/-; and asked the assessee to prove the *nature and source* of balance of Rs.49,65,799/- the same. Pursuant to which, assessee filed audited financials, P & L A/c, balance sheet of the relevant assessment year, as well as that of earlier assessment years & subsequent assessment years, and explained to the AO that the SBNs were from



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sundry debtors, who purchased goods from assessee on credit viz., trade receipts/sale receipts of fireworks/crackers sold during Diwali festival on 30.10.2016. It was brought to the notice of the AO with the aid of statistics that during Diwali Festival, assessee makes maximum sales and pointed out that in this relevant AY, Diwali Festival was celebrated eight (8) days before the demonetization; and that assessee booked sales during that week [Diwali] was 30% of its total sale i.e. Rs.92.08 lakhs (*excluding Sales Tax*); and that assessee's credit sales in September, 2016 was Rs.34.41 lakhs (11%) and that assessee's credit sales April-August was Rs.135.74 lakhs which was 44%; and that assessee in the P & L A/c has shown Revenue from business to the tune of Rs.3,06,69,628/- and has shown profit before tax and has returned income to the tune of Rs.9,19,180/-. Further, it is noted that the AO has not rejected the purchases, sales or audited books of accounts of the assessee; and it is not the allegation of the AO that assessee didn't had sufficient stock as on 31.10.2016 (Diwali day) for sale of firecrackers, whereas, we find that assessee had sufficient stock for making the sale in the last week of October, 2016; and it is not the case of the AO that assessee had any other source of income other than the business income from sale of firecrackers. Thus, it is noted that assessee's total sale of firecrackers during the year under consideration is to the tune of Rs.3,06,69,628/- which included the cash deposited/sale of



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Rs.49,65,799/--. In other words, the profit derived from the total sales of Rs.3,06,69,628/-includes cash sales of Rs.49,65,799/-, which was shown as total income for the purpose of Income Tax and the assessee has paid taxes on the said income. And we note that assessee has been regularly filing GST/VAT returns and has filed the relevant details before the AO. [CST sales Rs.2,76,06,461/-, as per CST order Rs.2,76,06,456/-] [TNGST – TN Sales Rs.30,63,167.27, as per VAT returns Rs.30,63,167/-]. In the light of the discussion (supra), it can be safely inferred that the profits embedded in Rs.3,06,69,628/- has been accepted by the AO. However, the AO has made separate addition of Rs.49,65,799/- which has already been considered for the purpose of Income Tax by adding the entire cash/SBNs which was sales of Rs.49,65,799/- u/s.69A of the Act by alleging it to be unexplained money of the assessee. In order to make addition u/s.69A of the Act, he has to first give a finding of fact that such money is not recorded in the books of accounts maintained by the assessee and the assessee couldn't offer any explanation about the nature and source of the money or the explanation offered by him is not in the opinion of the AO satisfactory, then in such an event, the money may be deemed to be the income of the assessee for such financial year. In this case, assessee maintained audited books of accounts and the assessee has been regularly filing GST/VAT returns and has shown Rs.49,65,799/- as business/trade receipts of fire crackers sold during



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Diwali festival on credit which has been collected by the assessee during the second week of November onwards and deposited in the bank account. It is settled position of law that when the assessee has given an explanation regarding source of the credit/currency, which is plausible/probable from a prudent persons point of view, then, it cannot be rejected by the AO without having any material to rebut the plausible explanation given by assessee. The Hon'ble Supreme Court in the case of Sreelekha Banerjee & Ors. v. CIT reported in [1963] 49 ITR 112 (SC), observed that "*the department could not act unreasonably and reject that explanation to hold that it was income. If, however, the evidence was unconvincing then such rejection could be made. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof*". In the present case, the assessee has not only explained the source of SBNs deposited in the bank to the tune of Rs.49,65,799/- as cash sales of fireworks on-credit along with the overwhelming relevant evidences viz., names of 207 customers (*who deposited cash in assessee's account*) along with the amount of money deposited/credited by them; PAN details except that of 15 persons, which we find from perusal of Page Nos.43 to 48 of the Paper Book. It is further noted that the assessee being trader of fireworks had dispatched the crackers/goods to various dealers throughout India and has given the dealers/distributors name, city, amount & PAN except '15' persons. Out of 207 persons, once



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PAN of the trader/distributors have been given, it takes only a click of the mouse to find out the address as well as the return details filed by that person. Therefore, it is presumed that once assessee filed all these details before the AO and the AO have not found any adverse material against them, the action of the AO to have rejected the same/relevant-evidences can't be countenanced. Thus, it is noted that assessee has placed before the AO the primary facts to prove the *nature and source* of SBNs, which has not been found by him to be incorrect or false. Therefore, the action of the AO to make addition u/s.69A of the Act, is not acceptable for the aforesaid reasons and stated (infra).

7. And as noted, the AO has not found any infirmity in the details filed by assessee to prove the nature & source of SBN's (supra) rather it is noted that the AO had acknowledged that assessee had filed the names of 207 customers, but didn't enquire the veracity of the assessee's assertion that money/SBNs have been deposited by them in his bank account, instead he has only stated that "assessee has not properly explained with supporting evidences without giving any confirmation from them". However, we don't accept such contention of the AO for the simple reasons that the assessee has furnished the name of the persons/traders/distributors throughout India to whom the assessee had given crackers/fire goods on credit during the Diwali festival on 30.10.2016 and has given the name of all the distributors/dealers which



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is found from Page Nos.43 to 48 of the Paper Book and the total comes to Rs.68,15,700/- out of which, the AO has accepted Rs.18,49,901/-, and didn't accept Rs.49,65,799/-, without conducting any enquiry to ascertain the veracity of the nature and source of cash deposit furnished by the assessee i.e. names & amount deposited by 207 customers/dealers.

8. Thus, it is noted that the assessee has discharged his burden to prove the *nature and source* of the cash deposits during the demonetization period which was nothing but receipt from trade sale of firecrackers, which cannot be brushed aside by the AO on conjectures, surmises and assumptions. We note that the addition made by the AO to the tune of Rs.49,65,799/- u/s.69A of the Act cannot be legally sustained, because, the same has already been accounted as sales in the books of accounts of the assessee, and tantamount to double taxation of the same income which is against the basic fundamental principles of taxation.

9. Moreover, the assessee has filed the comparative details of the sales carried out in AY 2015-16, AY 2017-18 & AY 2018-19. (i.e. earlier two assessment years and subsequent assessment year). From a perusal of the same, we find that there is no abnormal deviation from its normal course of its business. We note from the *modus operandi* of the business of the assessee (sale of firecrackers) which are normally in cash; and that the assessee manufactures the firecrackers gives it mainly on credits to



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sub-dealers allover Tamil Nadu and other States, by taking advance from them, and the sub-dealers would later sell it and deposit the sale-amount in the assessee's bank account. The details of cash deposits into bank in earlier and subsequent Financial Years reveals that there is no much deviation of cash sales and cash deposits when compared to earlier Financial Year and demonetization period. It is also not in dispute that in this line of business, the majority of the sales is in cash during festivals, marriages, etc., and therefore, from the business model of the assessee and the trade practice, there is no doubt whatsoever with regard to the explanation offered by the assessee that it has collected cash from debtors towards sales made in cash before demonetization period. Further, it is noted that the assessee has also regularly filing GST/VAT returns and there is also being no change or deviation in the VAT returns filed for the period i.e. before the announcement of demonetization. And note that the assessee also declared sales made in cash in their books of accounts and filed necessary return of income and paid tax of the said income. Moreover, we note that the assessee has also made cash deposits regularly before and during demonetization period and therefore, it is not a case of amount deposited in SBNs as come out of undisclosed source or under any circumstances only to change colour of the money. From the details filed by the assessee, it is evident that during the month of Diwali festival, assessee used to have the maximum sale made (on



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credit). From the analysis of earlier or subsequent years reveal that there is no significant change in the pattern of cash sales/cash collection and cash deposit during demonetization period. The AO is not disputing the claim of the assessee that the nature and source of the deposits were from sale of firecrackers to 207 customers whose details were furnished by the assessee. From the impugned action of the Ld.CIT(A) and the AO, it can be safely presumed that both authorities have taken adverse view because cash deposits were in SBNs after demonetization period and that assessee was ineligible to transact or receive SBNs after demonetization as per the notification dated 08.11.2016 by Government of India and concluded that since assessee has accepted the demonetized currency in violation of the said order, therefore, source explained by the assessee cannot be accepted. In other words, the AO never disputed the fact that the assessee has made sales in cash before the demonetization period and also realized amounts from debtors against cash sales made before the demonetization period.

10. We further, notes that the Central Board of Direct Taxes had issued a circular for the guidance of the Assessing 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.



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From the circular issued by the CBDT, it is very clear that, in a case where cash deposit found in business cases, the Assessing Officer 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 Assessing Officer needs to analyze the business model of the assessee, its books of account and analysis of sales etc. In this case, we have gone through the analysis furnished by the assessee in respect of total sales, cash sales realization from debtors and cash deposits during financial year 2015-16 & 2016-17, there is no significant change in cash deposits during demonetization period. 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 circulation/notification issued by Government of India and RBI, the source explained for cash deposits cannot be countenanced.

11. We also note from the financials filed by the assessee that assessee had enough stock of the fireworks to sale same to the customers on credit during the Diwali Festival i.e. 30.10.2016. Thus, we find that the assessee had sufficient stock as on 30.10.2016 (Diwali period) for sale of the goods which generated amount of Rs.68,15,700/- (out of which, the



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AO accepted Rs.18,49,901/-) to be deposited during the demonetization period and there are no defects in the stock registers. Every purchase and sale matches with inflow and outflow of the stock and as assessee has placed on record that the purchased goods have already inflicted with VAT/Sales Tax and the AO has not found any infirmity in the books of accounts of the assessee. Therefore, on the basis of facts discussed supra, we set aside the impugned order of the Ld.CIT(A) and direct the deletion of addition of Rs.49,65,799/-.

12. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 09th day of October, 2024, in Chennai.

Sd/-
(जगदीश)
(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 09th October, 2024.

TLN, Sr.PS

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.

4. विभागीयप्रतिनिधि/DR

5. गार्डफाईल/GF