IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'B' BENCH : BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No. 1309/Bang/2024
Assessment Year : 2017-18

M/s. Primary Co-operative Agriculture and Rural Development Bank Ltd., P C A & R D Bank Building, Rajendra Prasad Road, Jagalur, Davanagere Dist. – 577 528. **PAN: AABAP7490B**	**Vs.**	The Assistant Commissioner of Income Tax, Circle – 1, Davanagere.
APPELLANT		**RESPONDENT**

Assessee by	:	Ms. Sunaina Bhatia, CA
Revenue by	:	Shri Ganesh R. Ghale, Standing Counsel for Dept.

Date of Hearing	:	10-09-2024
Date of Pronouncement	:	15-10-2024

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 14/06/2024 in respect of Assessment Year 2017-18.

2. The brief facts of the case are as follows:

The assessee is a Primary Co-operative Agriculture Rural Development Bank registered under the provisions of the Karnataka Co-operative Societies Act. During the assessment year 2017-18, the assessee filed its return of income and claimed a loss. Thereafter, the case was selected under complete scrutiny and the assessment was completed by taking the deposits made in SBNs of Rs. 6,40,247/- as unexplained cash credit u/s 68 of the Act for the

reason that the same are illegal tender as per the gazette notification issued by the Government.

3. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that the deposits are nothing but the repayment of loan amounts by the members and therefore the order treating the said as unexplained cash credit u/s. 68 of the Act is not correct. Alternatively, the assessee also submitted that the said income should have been set off against the loss declared by the assessee. The Ld.CIT(A) had not accepted the case of the assessee and dismissed the appeal.

4. The assessee is in appeal before this Tribunal challenging the order of the Ld.CIT(A) on the following grounds:

> *"1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
>
> *2. The learned CIT[A] is not justified in upholding the addition of Rs. 6,40,000/- made as unexplained cash credit U/s 68 of the Act, rejecting the bonafide explanation tendered by the appellant for the source of the cash deposits made from out recovery of loans advanced to farmers in normal course of business, which addition has been made on the ground that the appellant had accepted the specified bank notes that was no longer legal tender under the facts and in the circumstances of the appellant's case.*
>
> *3. The learned CIT[A] is not justified in upholding the tax imposed under the provisions of section 115BBE at the rate of 60% under the facts and in the circumstances of the appellant's case.*
>
> *4. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234B of the Act, which under the facts and in the circumstances of the appellant's case and the same deserves to be cancelled.*
>
> *5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice*

rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

5. At the time of hearing, the Ld.AR submitted that the finding of the AO that the SBN notes are not a legal tender and therefore the same is treated as unexplained cash credit as per section 68 of the act is not correct. The Ld.AR further submitted that during their course of business, the assessee received SBNs from the members as against the loan account and the same were deposited by the assessee by cash and therefore it is not an unexplained cash credit as alleged by the AO and prayed to allow the appeal. The Ld.AR also relied on the order of the Tribunal in ITA No. 528/Bang/2024 dated 13/06/2024.

The Ld.DR relied on the orders of the authorities below and prayed to dismiss the appeal.

6. We have heard the arguments of both the sides and perused the materials available on record.

7. As seen from the facts, it is the contention of the assessee that the source of the cash deposits made during the demonetization period by SBNs are nothing but recovery of loans advanced to farmers in normal course of business. But the Assessing Officer as well as the Ld.CIT(A) has not considered the issue in detail whereas the assessing officer on the misconception that the SBNs are illegal tender and therefore the deposits of the said SBNs would attract section 68 of the IT Act. We find that the above finding of the AO is not correct when the AO had not conducted any further enquiries about the source of the SBNs received by the assessee. The AO also failed to consider the circular issued by the CBDT. This issue was clearly dealt with by the Hon'ble Chennai Bench of the Tribunal in the case of M/s. Purani Hospital Supplies Pvt. Ltd. in ITA No. 489/Chny/2022 in which the following findings are given:

"8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The facts borne out from records indicates that the assessee is in the

business of distribution of pharmaceutical goods, surgical and diagnostics goods, which is considered to be essential goods. The assessee has deposited a sum of Rs. 1,82,37,000/- during demonetization period in specified bank notes to various bank accounts. The assessee claims that source for cash deposit is out of realization of cash sales made before demonetization period. The assessee has filed necessary details including copies of sales bills made in cash before demonetization period and also list of parties from whom cash collected after demonetization period and deposited into bank account. The assessee had also filed necessary details of information furnished to department immediately after demonetization period towards cash collected from third party in response data. The Assessing Officer is not disputing all these claims of the assessee including evidence filed in support of justification for source for cash deposit. But, the Assessing Officer has made additions towards cash deposit in specified bank notes after demonetization period only for the reason that the assessee is not eligible to transact or receive any specified bank notes after demonetization as per notification/GO issued by RBI and Government of India. The Assessing Officer, had discussed the issue with reference to GO issued by RBI and Government of India and concluded that since the assessee has accepted demonetized currency in violation of circular/notification issued by the Government of India, the source explained by the assessee cannot be accepted. In other words, the Assessing Officer never disputed fact that the assessee has made sales in cash before demonetization period and also realized cash from debtors against cash sales made before demonetization period. Therefore, to decide the issue whether the assessee can accept specified bank notes even after it was banned for legal tender after 09th November, 2016 and further, the same can be added u/s. 69 of the Act as unexplained investment and also can be taxed u/s. 115BBE of the Act, it is necessary to examine the case in light of business model of the assessee, and evidence filed during the course of assessment proceedings.

9. The provisions of section 69 of the Act, deals with unexplained investment, where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of accounts, if any, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by the assessee is not in the opinion of the Assessing Officer, satisfactory, then the value of the investments may be deemed to be the income of the assessee of such financial year. In order to invoke provisions of section 69 of the Act, two conditions must be satisfied. First and foremost condition is there should be an investment and second condition is the assessee could not explain source for said investment. In this case, if you go through evidence filed by the assessee including comparative details of amount collected out of sales for financial year 2015-16 & 2016-17 and details of cash deposit into bank for above financial years, we find that there is no abnormal deviations from its normal course of business. Further, on

verification of analysis of cash sales and cash deposits to bank account there is no deviation of cash sales and cash deposits when compared to earlier financial year and demonetization period. Further, the assessee is dealing in essential commodities like medicines, surgical and diagnostics equipment through medical shops, hospital, doctors etc. The agents of the assessee come and collect cash from parties and directly deposit to bank account of the assessee. It is also not in dispute, in this line of business the majority of sales is in cash, because doctors, hospitals and medical shops mainly deals with cash. Therefore, from the business model of the assessee and trade practice there is no doubt of what so ever 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, the appellant has also regularly availing GST/VAT returns and there is also being no change or deviation in the VAT returns field for the earlier months i.e., before the announcement of demonetization. The assessee had also declared sales made in cash in their books of accounts and filed necessary return of income and paid taxes on said income. The appellant has also made cash deposits regularly before and during that period including the notes which are not banned and therefore, it is not a case of amount of deposit in specified bank notes has came out of undisclosed source or under any circumstances only to change the colour of the money. From the details filed by the assessee, it is evident that during the month of November and December, the assessee has made almost more than 5 crores cash deposit which includes various demonetized currency and regular notes. Further, the Assessing Officer has accepted fact that out of total cash deposits, only a sum of Rs. 1,82,37,000/- is in specified bank notes. From the above, it is very clear that there is no significant change in the pattern of cash sales, cash collection and cash deposit during demonetization period, when compared to earlier period in the same financial year and also during immediate preceding financial year. Therefore, we are of the considered view that the assessee has satisfactorily explained source for cash deposit made during demonetization period in specified bank notes and thus, the Assessing Officer is completely erred in making additions u/s. 69 of the Act.

10. Coming back to the observations of the Assessing Officer with regard to GO/notification issued by the RBI and Government of India, to deal with specified bank notes. The Assessing Officer is mainly on the issue of notification issued by the RBI to deal with the specified bank notes and argued 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 has been withdrawn from circulation from 09th November, 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 31st December, 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 31st December, 2016. Therefore, there is no clarity on how to deal with demonetized currency from the date of demonetization and up to 31st December, 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 Assessing Officer makes out a case that the assessee has deposited unaccounted cash into bank account in specified bank notes.

11. We further, noted 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. 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, if you go through analysis furnished by the assessee in respect of total sales, cash sales realisation 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 rejected. In our considered view, to bring any amount u/s. 69 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.
12. At this stage, it is relevant to consider certain judicial precedents relied upon by the ld. Counsel for the assessee. The Ld. Counsel for the assessee relied upon the decision of Delhi High Court in the case of Agson Global Pvt Ltd vs ACIT [2022] 325 CTR 001. The Hon'ble Delhi High Court held that additions made on the sole ground of deviation in the ratio of cash sales and cash deposits during the demonetization period with that of earlier period, is improper and unlawful."

8. Further, the Ld.CIT(A) had also not considered the plea that the assessee is a Regional Rural Bank and it was authorized to deal with SBNs as per the circular issued by the Reserve Bank of India. The finding given by the Ld.CIT(A) that the assessee might be authorized to deal with SBNs, but only for the general public, i.e. exchanging of their old notes or deposits of SBNs in their individual accounts and therefore the said authorization cannot be taken as a permission for deposits of SBN notes of Rs. 6,40,247/- We have seen from the above said finding that the Ld.CIT(A) had accepted that the assessee can receive the SBNs from the general public in exchange of their old SBNs but not authorized to deposit the said old SBNs. We find that the reasoning given by the Ld.CIT(A) is not correct for the simple reason that when the assessee is permitted to receive SBNs from the general public naturally, the SBNs should be deposited otherwise there is no logic in permitting the assessee to receive the SBNs from the public during demonetization period. In this case, the assessee had received the SBN notes while recovering the loan amount from the members and therefore naturally, the said SBN should be deposited into their account which was permitted by the Government. As observed by the Hon'ble Chennai Bench in the order cited (supra), the AO as well as the Ld.CIT(A) had not considered the circular issued by the CBDT which was issued for the guidance of the assessing officer to verify the cash deposits during demonetization period in various categories of explanation offered by the assessee. If the assessing officer had followed the circular issued by the CBDT, the assessee could have explained the facts in detail and satisfied the AO that the deposits are nothing but recovery of loan amounts in SBNs and the same were deposited into their account as per the scheme announced by

the Government and therefore the same could not be treated as unexplained cash credit. Even though, the assessee is having a good case on merits, the assessee had not submitted the full details of the borrowers from whom the recovery was made in the SBNs in order to support their case.

9. We therefore of the view that the issue may be remitted to the file of the AO for the limited purpose of submitting the details of the borrowers from whom the SBNs were received by the assessee during the demonetization period and if the assessee was able to demonstrate before the AO that the SBNs were received from the borrowers, the assessee is entitled for the benefit and the assessment made u/s. 68 is not sustainable. With the above direction, we remit the issue to the AO for deciding the issue afresh after hearing the assessee and also after perusing the details of the borrowers submitted by the assessee, in the interest of justice.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15th October, 2024.

Sd/-	Sd/-
(WASEEM AHMED)	(SOUNDARARAJAN K.)
Accountant Member	Judicial Member

Bangalore,
Dated, the 15th October, 2024.
/MS /

Copy to:

1. Appellant	2. Respondent
3. CIT	4. DR, ITAT, Bangalore
5. Guard file	6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore