आयकर अपीलीय अधिकरण,'सी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 1271/CHNY/2024**

निर्धारण वर्ष/Assessment Year:2017-18

The Assistant Commissioner of Income Tax, Corporate Circle 1(1), Chennai.	Vs.	**Folium Trading Pvt. Ltd.,** Old No.42, 43, 44, New Door No.73, Shop No.G8, Arcot Road, Kodambakkam, Chennai – 600 024. **PAN: AACCF 4425B**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by	:	Ms. R. Anita, Addl.CIT
प्रत्यर्थी की ओर से/Respondent by	:	Shri D. Anand, Advocate

सुनवाई की तारीख/Date of Hearing	:	17.10.2024
घोषणा की तारीख/Date of Pronouncement	:	25.10.2024

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi in Order No. ITBA/NFAC/S/250/2023-24/1060106027 (1) dated 25.01.2024. The assessment was framed by the Assistant Commissioner of Income Tax, Corporate Circle 2(1), Chennai for the assessment year 2017-18 u/s.143(3)of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 19.12.2019.

2. At the outset, it is noticed that this appeal is barred by limitation by 28 days and Revenue has filed affidavit. The facts are that the order of CIT(A) dated 25.01.2024 was received in the office of PCIT on 02.02.2024 and the due date of filing of appeal before ITAT was 03.04.2024 but actually the appeal was filed only on 30.04.2024. Thereby, there is a delay of 28 days. The reason stated by the AO in his affidavit reads as under:-

> *"4. It is submitted before the Hon'ble Tribunal that the delay has happened because in this case, TP issue was involved and to prepare the scrutiny report, TPO's comment was necessary. This office has received the necessary TPO's comments on 06.05.2024 for the above mentioned case. Therefore, the scrutiny report to the PCIT-3, sent on 06.05.2024 from this office."*

2.1 Since there is a delay of 28 days and assessee has not objected to the same, we are inclined to condone the delay and admit the appeal.

3. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by AO being cash deposited during the year of Rs.3.05 crores as unexplained cash credit and added u/s.68 of the Act and also taxed under the provisions of section 115BBE of the Act. The Revenue has raised the following grounds:-

2. The Ld. CIT (A) has erred in not addressing the various facts and findings brought out by the Assessing Officer.

3. The Ld. CIT (A) has failed to note the contradictory claims by the assessee of receiving cash in crores from parties located in other states on hand and not able to produce the PAN of such parties on the other.

4. The Ld. CIT (4) has erred in not providing opportunity to the Assessing Officer under Rule 46A to examine fresh evidence,/ additional details.

5. The Ld. CIT(A) has decided the issue on a prejudiced manner by merely stating that the AO has not demonstrated with proper evidence why he has not accepted the contentions of the assessee, without addressing the specific facts and findings of the AO brought out in detail in assessment order, thus rendering the order of the learned CIT(A) perverse.

4. Brief facts are that the assessee, a private limited company is engaged in trading of imported paper and also in electronics. The assessee filed return of income for the relevant assessment year 2017-18 on 03.11.2017 and subsequently, assessee's case was selected for scrutiny assessment under CASS and notice u/s.143(2) of the Act was issued on 11.08.2018. The AO during the course of scrutiny assessment proceedings noticed that the assessee has deposited an amount of Rs.3,05,14,820/- during demonetization period in Specified Bank Notes (SBNs). The assessee explained the source before the AO as under:-

Sl.No.	*Cash collection*	*Source*
1	*19,46,014*	*Cash sales*
2	*53,10,325*	*Debtor outstanding*
3	*2,33,43,210*	*Debtor current*

The assessee claimed that the assessee was having cash balance as on 08.11.2016 in its books of accounts and out of that only the assessee has deposited this cash of Rs.3,05,14,820/- in assessee's bank account in SBNs. The assessee explained the source of cash available in books of accounts as on 08.11.2016 as out of cash sales, cash collection from debtors outstanding in previous year and debtors of current year. The AO required the assessee to file comparative details of cash transactions and he noted that the cash received or cash collection during the year is maximum at Rs.2,86,53,535/- as against cash collection in 2015-16 at Rs.1,01,439/-, in assessment year 2016-17 at Rs.3,03,552/- and in 2018-19 at Rs.7,23,971/-. He noted that there is no single instance of cash deposit made during assessment year 2016-17 whereas in this year the amount deposited is Rs.3,05,19,920/- out of which, the deposit in SBNs is to the extent of Rs.3,05,14,820/-. The AO required the assessee to provide details like PAN, address of debtors from whom it have claimed to have received cash and have deposited. The AO also required the assessee to produce cash book, bank book and complete details like item sold, sale bill, cash receipt voucher for whom cash sales were done. The AO also noted that out of the debtors, the assessee has received major amounts from the following three

Party name	*Amount received*
Orient enterprises, Rajkot	*1,79,81,532*
S K Enterprise, Hyd	*30,02,815*
D K Traders, Hyd	*23,09,313*

He analyzed the same and noted that the assessee has incurred cash expenses of Rs.4,78,067/- whereas cash received and deposited in bank accounts is amounting to Rs.3,05,19,920/-. He also noted that the available cash on various dates i.e., above Rs.1.50 crores remains which is unusual and cannot be believed. The AO noted that there are VAT sales against cash collection. Still, according to him unusual and not genuine. He recorded this fact in para 4 as under:-

> *4.The above unreasonable activities proved that that assessee manipulated the books of account in such a way that there was available cash balance as on 08/11/2016 and matched the same with cash deposits. Further, due to various anomalies in cash collection as explained above, it is proved that such cash collection is not the source of cash deposits. Further, the pattern of cash deposits also proves that the there was no cash balance as on08.11.2016. Though the assessee had recorded the VAT sales against cash collection, still the cash collection is unusual and not genuine. The assessee could have deposited in a single instance once demonetisation is announced, if it is accounted cash. Further, the main question is why, the assessee should have such huge cash of Rs. 3 crores without depositing as on when it received the cash from vendors. It is apparently visible that the assessee worked reverse engineering to show that it had cash balance. It means first the assessee deposited the cash and then back worked to bring the cash balance.*
>
> *4.1 It is to be noted that apart from the cash deposits there were only Rs. 14,000/-deposited during the entire year. The nature of the business is also not cash rich and mostly through bank transactions. It is to be noted that the reason given for cash deposits is not credible enough to believe beyond*

doubt. Further, the period gap between the cash collection and cash deposit are very large and the reason for keeping cash ideal is not matching with the business nature of the assessee. No prudent business men will keep the cash idle for such a long time and based on the facts and circumstances there is no preponderance of probability in support of claim made by the assessee. Hence applying the principal of preponderance of probability, the explanation of for the source of cash deposited is hereby rejected for want of substantiating evidences and the reason given for cash deposits is not credible enough to believe beyond doubt.

4.2 Hence I am constrained to conclude that the above cash deposits were held by the assessee outside the books of account and deposited on various dates as on when it was collected during demonetisation. After demonetisation announcement, the assessee brought in the same in the books of account claiming as cash sales or debtor cash collection. However, there is a fact that without cash balance the assessee cannot run the business. Therefore, according to the nature of cash expenses of the assessee, an amount of Rs.19,920/- is allowed as explained cash. Accordingly, the cash deposits of Rs. 3,05,00,000/- is treated as unexplained cash credit and added as income of the assessee u/s 68. It is to be noted that the unexplained cash credit of RS. 3,05,00,000/-is taxed @ 60% without set off of any loss or deduction as per provision of section 115BBE of the Act.

Accordingly, he added the cash deposit of Rs.3.05 crores as unexplained cash credit and added to the income of the assessee u/s.68 of the Act. The assessee's unexplained cash deposit of Rs.3.05 crores was taxed u/s.115BBE of the Act. Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) deleted the addition by accepting the submissions of the assessee that the cash receipt by various sources i.e., cash sales, debtors outstanding realization and debtors of current year realized is matching with the VAT returns and hence, he accepted

the cash deposited during the year before demonetization and treated the cash-in-hand as on 08.11.2016 at Rs.3.05 crores as explained by observing as under:-

6.1. After the perusal of the submission made by the appellant, during the appeal proceedings, I have issued a notice and called for the following documents:
1. Copy of VAT Return.
2. VAT assessment orders if any.
3. Cash book details.
4. Ledger copy of the purported deposits in cash.
5. The product wise details post-demonetization and pre-demonization.
6. The invoice copies thereof.

On perusal of the information submitted by the Appellant, I am of the opinion that during the impugned assessment year 2017-18, the Appellant has recorded sale of Rs 8,10,15,97,635/- in the books of account which are tallying with the VAT returns submitted by the Appellant. Had it been only an afterthought, no Assessee can go back and change or correct the VAT returns, that too after a period of 6 years from the end of the previous year 2016-17. Hence, sales recorded by the Appellant have to be treated as genuine at first glance. The appellant has filed confirmations from the respective debtors which have been received through mails and the ledger copies of the said debtors maintained in the books of the appellant for the year under consideration.

6.2.Now turning towards the cash available and deposited by the Appellant, the explanation of the Appellant that the amount was recovered from the debtors cannot be denied as there is evidence available in the form of confirmation letters submitted by the Appellant, the parties have confirmed the transaction entered into by them. The ledger copies submitted show that the amounts are received from the parties both in cash and bank transfers, when the AO has accepted the bank transfer can he deny the submission of the Appellant that the cash has been received by the Appellant from the same parties, to my understanding and applying the Evidence Act, the document has to be accepted in total and cannot be accepted for certain transaction and cannot be denied for other transaction such as cash received. Hence, there is no other evidence to prove that the cash which is accounted by the Appellant as receipts from debtors is his own cash which

was outside the books of account and has been deposited on various dated by the Appellant. This assumption of the AO to make the addition is not sustainable in the eyes of law.

6.3 Thus, conclude that there is no tangible evidence to prove that the cash deposits belongs to the assessee and the same fact is confirmed by the debtors thereof and hence, I have no hesitation in accepting the said cash transactions to be genuine transactions and not otherwise. Assessee gets the relief and thus, the grounds of appeal are hereby allowed.

Aggrieved, Revenue is in appeal before the Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. The ld.Senior DR relied on the assessment order and stated that the assessee in assessment years 2015-16, 2016-17 & 2018-19 has not carried out cash sales and cash collection in comparison to assessment year 2017-18 abnormal high. She argued that there is abnormal cash balance available with the assessee as on 08.11.2016 i.e., amounting to Rs.3,09,45,277/- out of which Specified Bank Notes i.e., demonetized currency is Rs.3,05,14,820/-. According to her, the alleged claimed source of cash i.e., cash sales, cash collection from debtors outstanding in previous year and realization of current debtors claimed by assessee are not genuine and hence, the AO has rightly made addition of this cash deposit of Rs.3.05 crores as unexplained cash credit u/s.68 of the Act and charged to tax u/s.115BBE of the Act. We noted that the

assessee has explained the cash deposit in SBNs received during demonetization period on account of cash sales during the relevant assessment year, realization of debtors outstanding in previous years and also debtors during current year amounting to Rs.19,46,014/-, Rs.53,10,325 & Rs.2,33,43,210/-, which is a fact as per books of accounts. Admittedly, there are amount received on account of current debtors of Rs.2,33,43,210/- from specified parties Orient Enterprises, Rajkot, S K Enterprise, Hyderabad and D K Traders, Hyderabad. The assessee has also reconciled the cash sales, debtors outstanding, viz-a-viz VAT returns. Admittedly, the assessee's turnover during the year is Rs.810 crores as compared to last year turnover of Rs.383 crores, which means that the turnover has jumped 211.48% during the year. These facts show that the cash realized through cash sales, debtors is not abnormal and the AO could not point out any defect in the same. Admittedly, these parties, from whom the assessee has realized the debts, the confirmation was received late and assessee now before us filed the confirmed account statement, which were filed before CIT(A). Once there is no defect in the books of accounts and the VAT returns which accepted as it is and corresponding sale is also not disturbed, we find no infirmity in the generation of this cash on or before 08.11.2016. This cash generation is over the period from

01.04.2016 to 08.11.2016. Out of total cash available in assessee's books of accounts as on 08.11.2016 of Rs.3,09,45,227/-, a sum of Rs.3,05,14,820/- is in demonetized currency i.e., Specified Bank Notes. As the cash is explained and sources are recorded in books of accounts and books of accounts are not rejected by AO and there is no iota of evidence that the assessee has introduced unaccounted cash, the cash deposited by assessee during demonetization period in SBNs stands explained. Further, we find that this issue is covered by the decision of Co-ordinate Bench of this Tribunal in the case of TamilNadu State Marketing Corporation Ltd., vs. ACIT in ITA No.431/CHNY/2023, order dated 07.10.2024, wherein it is held that simpliciter the SBNs will not be added when the source of cash is explained. The Tribunal 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.

In view of the above, we find no fault in the order of CIT(A) and hence, the same is confirmed. Accordingly, this appeal of Revenue is dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 25th October, 2024 at Chennai.

Sd/-	Sd/-
(जगदीश)	(महावीर सिंह)
(JAGADISH)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 25th October, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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