

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri Waseem Ahmed, Accountant Member &
Shri Soundararajan K, Judicial Member**

ITA No.212/Coch/2024:Asst.Year2017-2018
&
SA No.18/Coch/2024

Kaippallil Jewellers Varieth Centre Plaza Nangiarkulangara Alappuzha – 690 513. PAN : AAIFK1538M.	v.	The Assistant Commissioner of Income-tax, Circle Alappuzha.
(Appellant/Applicant)		(Respondent)

Appellant/Applicant by : Sri.Suresh Kumar Varma, CA
Respondent by : Ms.Leena Lal, Sr.AR

Date of Hearing : 03.10.2024	Date of Pronouncement : 21.10.2024
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ORDER

Per Bench :

This appeal by the assessee, along with its stay application therein, arises out of the order of the CIT(A)/NFAC, Delhi, dated 18.01.2024 in the proceedings u/s143(3) of the Income-tax Act, 1961; in short “the Act” hereinafter, in respect of assessment year 2017-2018.

2. The only issue raised by the assessee is that the ld.CIT(A) erred in conforming the addition made by the Assessing Officer for Rs.51,26,000 u/s 68 of the Act, representing cash deposits made during demonetization period in SBN.

2.1 The AO during the assessment proceedings found that there was cash available as on 8th November 2016 amounting to Rs.1,14,34,301, which was deposited in five occasions. The AO also noted that the assessee has also deposited SBNs out of the sales made after 09.11.2016. According to the assessee, the sale was made only for earning the profit and therefore SBNs were received during demonetization period. However, the AO was of the view that the SBN was no more a legal tender after 8th November 2016 and the assessee was not authorized to accept such SBNs. The AO further found that the total deposits made in SBNs stands at Rs.1,01,26,000. The AO further treated the sum of Rs.50 lakh as explained as per the books of account and remaining amount of Rs.51,26,000 treated as unexplained u/s 68 of the Act. Thus, the AO made the addition of Rs.51,26,000 as unexplained cash credit u/s 68 of the Act.

3. Aggrieved, the assessee preferred an appeal to the learned CIT(A), who confirmed the order of the AO.

3.1 Being aggrieved by the order of the ld. CIT-A, the assessee is in appeal before us.

4. The learned AR before us filed a paper book running from pages 1 to 128 and contended that the entire amount of SBN currency deposited in the bank account was duly recorded in its books of account, and therefore, the same cannot be treated as unexplained u/s 68 of the Act.

5. On the other hand, the learned Departmental Representative vehemently supported the orders of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee claimed to have received money in SBN after 8 November 2016 which was deposited in the bank account during the demonetization period. As per the revenue, the SBN were not the legal tender during the relevant time and therefore such currency was nothing but a piece of paper having no value. But the assessee by accepting such SBN during demonetization and then depositing such SBN in its bank account during the demonetization period has got the benefit of equivalent value in the new currency which was representing the unexplained money of the assessee and therefore the same was added under the provisions of section 68/69A of the Act.

7. It is the admitted position that the specified bank notes (cessation of liabilities) Act 2017 provides that no person shall knowingly or voluntarily hold, transfer, or receive any specified bank note on and from the appointed date i.e. 31st day of December 2016. As such, before 31st December 2016 i.e. between 9th November 2016 to 31st December the banks, and other institutions such as petrol pumps, hospitals, and Government Department were allowed to accept SBN with certain restrictions. In other words, up to the appointed date, the Government of India and RBI were bound to exchange the

SBN once they are tendered for exchange until 30th December 2016. Accordingly, such SBN cannot be treated as just a piece of paper having no value on or after 9 November 2016 as alleged by the revenue. We also find that the Chennai Tribunal in the case of Raju Dinesh Kumar v. DCIT reported in 159 taxmann.com 1598 involving identical facts and circumstances has held as under:

10. Having said so, let us come back to the explanation of the assessee with regard to source for remaining cash deposits. The assessee claims that he is into manufacturing of various kinds of dhalls and sells to unregistered dealers in cash. The assessee claims that he has collected cash in demonetized currency from customers even after 09.11.2016 and said cash receipts is not violation of SpecifiedBankNotes (Cessation of Liabilities) Act, 2017. We find that although, the Government of India & RBI issued various notifications and circulars barring people transacting in SBNs, but, as per SpecifiedBankNotes (Cessation of Liabilities) Act, 2017, no person shall accept or transact any SBNs from the appointed date. As per said Act, appointed date is 31.12.2016. From the above, it is very clear that up to appointed date, persons can transact in SBNs. However, the only requirement is, they should be able to establish source for said cash deposits. This principle is further fortified by the decision of the ITAT Chennai Bench in the case of Amar Sparklers Factory v. ITO in [IT Appeal No. 808 (Chny) 2023, dated 11-10-2023],

8. In view of the above and after considering the facts in totality, we hold that the SBN deposited by the assessee during the demonetization period cannot be treated as unexplained money under section 68/ 69A of the Act merely because the assessee accepted the same after announcement of demonetization scheme.

9. However, it is pertinent to note that the assessee is under the obligation to explain the source of money received during the demonetization period. In this regard, we note that the entire amount of deposit was duly recorded in the books of accounts which was generated out of the sales as evident from the sales register, cash book and audited financial statements available in the paper book. The revenue has also not pointed

out any infirmity in the books of accounts of the assessee. Therefore, we are inclined to set aside the finding of the Id. CIT-A and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

10. In the result, the appeal of the assessee is hereby allowed.

11. Since the appeal is disposed of, the stay petition filed by the assessee becomes infructuous, and the same is accordingly dismissed.

12. In the result, the appeal by the assessee is hereby allowed and the stay petition is dismissed as infructuous.

Order pronounced on this 21st day of October, 2024.

Sd/-
(Soundararajan K)
JUDICIAL MEMBER

Sd/-
(Waseem Ahmed)
ACCOUNTANT MEMBER

Cochin ; Dated : 21st October, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT Concerned.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin