

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JM &
MS PADMAVATHY S, AM**

**I.T.A. No.4040/Mum/2024
(Assessment Year: 2017-18)**

Citizen Credit Co-operative Bank Ltd., Citizencredit Centre, CTS No. 236, Marve Road, Orlem, Malad(W), Mumbai-400064. PAN : AAAAC0016F	Vs.	DCIT, Circle-1(2)(1), Room No. 535, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri J.D. Mistry / Shri Harsh Kothari, AR

Revenue / Respondent by : Shri Ramakrishna Bandi, CIT-DR

Date of Hearing : 04.11.2024

Date of Pronouncement : 12.11.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 18.06.2024 for Assessment Year (AY) 2017-18. The assessee raised the following grounds of appeal:

“1. The Learned Commissioner of Income-tax (Appeals) ("CIT(A)") erred in not deleting the addition of Rs. 16,20,93,481 made by the Assessing Officer ('AO) under section 69A r.w.s. 115BBE of the Income-tax Act, 1961 ('the Act).

2. The CIT(A) erred in not appreciating that none of the conditions specified in section 69A were satisfied viz. the appellant was not the owner of any money as alleged, there was no allegation that money was not recorded in the appellant's books of accounts and that the appellant had also offered explanation about the discrepancies in the statements submitted to the Reserve Bank of India.

3. The CIT(A) erred in not appreciating that the addition under section 69A could not be sustained as the appellant cannot be treated as an owner of money as alleged and, the money collected by the appellant bank belonged to its account holders/ general public.

4. The CIT(A) further erred in not appreciating that the AO had made an addition under section 69A of the Act almost entirely on the basis of certain discrepancies made in the statements submitted by the appellant bank to the Reserve Bank of India which were rectified subsequently. The CIT(A) ought to have appreciated that the AO had not found any money which was owned by the appellant, bank.”

2. The assessee is a Co-operative Bank engaged in the business of banking and is having 42 branches across India. The assessee filed the return of income for AY 2017-18 on 17.10.2017 declaring a total income of Rs. 35,20,12,970/-. A survey under section 133A of the Income Tax Act, 1961 (the Act) was carried out in the premises of the assessee on 21.12.2016 by the office of DDIT (Inv.). During the course of survey, the Managing Director of the Bank was asked to provide copy of Annexure-6A which the assessee is required to file with RBI as per the notification issued during demonetization period containing details of the Special Bank Notes (SBN) exchanged/deposited/withdrawn etc. The assessee filed the said details up to

the date of 21.12.2016 totaling to Rs. 290,72,54,000/-. The Managing Director was also asked to provide details of SBN received by the assessee as appearing from their customer's account balance. The assessee extracted the said details the internal software Fincraft and submitted before the AO. The Assessing Officer (AO) from the details submitted noticed that the total of the customer account balance is totaling to Rs. 278,79,76,000/- resulting in a difference of Rs. 11,92,78,000/- as compared to the Annexure-6A filed with RBI. The assessee in response to the query raised by the AO in this regard submitted that Annexure -6A is based on the data extracted from Core Banking and will include SBN received from branches etc., and since the software did not have the required module to capture all the details SBN some manual intervention was required which might have lead to the difference. The assessee furnished a revised reconciliation before the AO with reasons wherein the difference between the Annexrue-6A and customer account balances for the period 10.11.2016 to 31.12.2016 amounted to Rs.14,73,92,000/. Further the assessee submitted explanation for all the differences between Annexure-6A and the customer account balances. The assessee also submitted before the AO that a revised Annexure-6A is submitted to RBI rectifying the errors and that the RBI has not given any adverse finding with regard to the revised Annexure-6A filed by the assessee. The AO, however did not accept the submissions of the assessee and held that the assessee failed to provide any evidence to substantiate the reason for the difference and accordingly added the difference amount of Rs. 14,73,92,000/ under section 69A of the Act.

3. The AO during the course of hearing also called on the assessee to provide the amount of demonetized notes available with the assessee, its branches, its vaults or and with ATM's as on 21.12.2016 along with reconciliation of total demonetized notes held on 08.11.2016 along with the SBN receipts either as

deposit or for exchange from 09.11.2016 to 21.12.2016. The AO based on the details submitted by the assessee noticed that there is a difference of Rs. 26,62,500/- between the physical balance of SBN and the statements submitted by the assessee and accordingly treated the difference as addition under section 69A of the Act. The AO called on the assessee to provide a similar statement along with the details of tenderable currency as on 21.12.2016 and made addition of Rs. 1,20,38,981/- being the difference between tenderable currency available with the assessee and the statement furnished by the assessee as of 21.12.2016 of tenderable currency. The AO accordingly made a total addition of Rs. 16,20,93,481/- under section 69A of the Act to be taxable under section 115BBE of the Act. Aggrieved, the assessee filed further appeal before the CIT(A). Before the CIT(A), the assessee contended the issue on merits besides raising the legal contention that no addition under section 69A could be made since the assessee is not the owner of the money deposited by the customers. The CIT(A) dismissed the appeal without giving any detailed finding both on merits as well as the legal contention of the assessee. The relevant findings of the CIT(A) is extracted below:

“1. Grounds of Appeal, the assessee objects to addition of Rs. 162093481 u/s 69A r w s 115BBE being money deposited during demonitization period. For the reason stated by the AO in para 10 and its sub-paras in the assessment order, the amount of Rs. 162093481 is added u/s 69A of the Act. The contention of the assessee is that the difference in the data as reported in Annexure 6A is due to the fact of inclusion of inter office accounts as well as inclusion of exchange of SBN's and similar problems. If the same is considered, usually the amount as Reported in Annexure 6A should always be higher as compared to the value as appearing in Fincraft. However, on various dates i.e. 05th, 06th, 07th, 12th, 15th, 16th, 19th and 20th December 2016, the values appearing in Fincraft is higher as compared to amount s reported in Annexure 6A submitted by the managing director.

2. The appeal filed by the assessee is dismissed.”

4. The ld. AR at the outset submitted that the addition could not have been made under section 69A of the Act since the main requirement for invoking the said provision is that the assessee is found to be the owner of any money/bullion/jewellery/other valuable articles not recorded in the books of accounts maintained by the assessee for which the assessee offers no explanation or the explanation provided is not to the satisfaction of the AO. The ld. AR further submitted that in assessee's case the money deposited by the customers in SBN is not owned by the assessee and therefore, the AO is not correct in making the addition under section 69A of the Act. The ld. AR in this regard placed reliance on the decision of the Hon'ble Supreme Court in the case of D.N Singh Vs. CIT (2023) 150 taxmann.com 301(SC). On merits, the ld. AR submitted that Annexure-6A submitted by the assessee to RBI from 08.11.2016 is in accordance with the circulars issued by the RBI and the details to be provided in Annexure-6A got revised from time to time by RBI. The ld. AR further submitted there are no issues reported by the customers in their balances and therefore the difference in the balance as reported in Annexure-6A is due to the reasons explained by the assessee and therefore the AO is not correct in making addition with appreciating these facts. The ld. AR drew our attention to the details submitted before the AO (page 56 to 93 of PB) to submit that the assessee has furnished details of each and every item of difference and that the AO did not record any specific adverse finding with regard to the submissions. The ld. AR also submitted that the RBI in response to notice issued by the AO under section 133(6) of the Act has replied without any adverse comment on the revised Annexure-6A filed by the assessee. The ld. AR drew our attention to the Audit Report on SBN wherein the Auditors have given a specific finding that during audit no suspicious / malafide transactions were

noticed with regard to SBN (page 69 to 86 of PB) and the said report was submitted before the AO. Accordingly, the Id. AR summarized that the addition made by the AO cannot be sustained both on legal as well as on merits.

5. The Id. DR other hand vehemently argued that during demonization period the assessee is required to maintain all the records properly and the contention that there were errors happened in the reporting due to manual intervention cannot be accepted. The Id. DR further submitted that the assessee has reported a higher amount as per Annexure-6A as compared to the balance reflected in customer's account which would mean that the assessee was in possession of SBN which have not been recorded in the books of account. The Id. DR also argued that the assessee has not discharged the onus of substantiating the difference by proper documentary evidence such as the KYC forms submitted by the customers and therefore the AO has correctly treated the difference amount as unexplained to make the addition under section 69A. On the contention of the Id. AR that the assessee is not the owner of the SBN deposited by the customers, the Id. DR submitted that when the details pertaining to the excess SBN are not submitted by the assessee the natural conclusion drawn by the AO that the assessee is the owner of the SBN cannot be faulted with. The Id. DR further argued that the assessee should have established before the AO about the correct owner through KYC or other documentary evidences in support of the contention that the assessee is not the owner. The Id. DR submitted that the reliance placed by the Id. AR on the decision of the Hon'ble Supreme Court in the case of D.N Sing (supra) is distinguishable for the reason that in that case the transporter of Bitumen was held to be not owner and that the assessee cannot be compared with the transporter. The Id. DR further submitted that since the assessee did not establish the ownership of the SBN the appeal could

be set-aside to the AO for examining the KYC documents to be decided accordingly.

6. The Id. AR while presenting counter arguments vehemently submitted that the assessee during the course of assessment proceeding was not asked to submit the KYC documents of the customers to establish the ownership of the SBN. The Id. AR further submitted that it is nobody's case that the assessee has introduced bogus accounts as contended by the Id. DR which would justify the addition under section 69A of the Act. The Id. AR also submitted that it is an admitted fact by the assessee that there are discrepancies between Annexure-6A submitted to the RBI and the balance in customer account as per Fincrafts and that the assessee has not tried to hide any facts and has provided explanation for every entry of discrepancy before the AO.

7. We heard the parties and perused the material on record. During the demonization period the assessee has accepted SBN from its customers and has deposited the same with RBI /other Banks acting as currency chests. As per the requirements of RBI the assessee submitted reports in Annexure-6A as prescribed by the RBI providing details of SBN deposited /exchanged by the assessee from customers. The AO as part of the survey proceedings under section 133A of the Act compared the details of SBN as per Annexure-6A submitted to the RBI with the report from Fincraft a software used by the assessee which reflects the customer balances. The AO did not accept the submissions of the assessee explaining the reasons for the difference between these two reports and therefore made an addition of Rs. 14,73,92,000/- under section 69A of the Act. The AO made similar addition under section 69A towards the difference in legal tenders for

Rs. 1,20,38,981/- and difference in closing balance as on 21.12.2016 amounting to Rs. 26,62,500/-.

8. The primary contention of the Id AR with regard to addition being made under section 69A of the Act, on the ground that the assessee is not the owner of the money. Therefore before proceeding further we will look at the provisions of section 69A of the Act –

Unexplained money, etc.

69A. *Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.*

9. From the plain reading of the section it is clear that the prerequisite for invoking the provisions of section 69A is that the assessee should be the owner of the money and the money should not have been recorded in the books accounts of the assessee. Black's Law Dictionary, has defined the term "ownership" as Collection of rights to use and enjoy property, including right to transmit it to others. Therefore, ownership is de jure recognition of a claim to certain property. Further ownership comes with the right of exclusive possession and enjoyment of the thing owned and the owner in possession of the thing has the right to exclude all others from the possession and enjoyment of it. The owner if he is wrongfully deprived of what he owns has a right to recover possession of it from the person who wrongfully gets into possession of it. The assessee being a co-operative bank has accepted cash in SBN during the demonetization period in the normal course

of its business. The money deposited by the customers cannot be said to be owned by the assessee since the assessee does not have any right of the owner (as explained above) and that the balance in customer account is a liability to the assessee to be returned as and when the customers demand. With regard to the argument of the Id DR that the assessee has not discharged onus that the excess balance as per Annexure 6A belongs to the customers by producing KYC, we notice that the AO during the course of assessment proceedings did not call for any details pertaining to the ownership of the money such as KYC. Further during demonetization period several compliance requirement regarding identity of the depositors were implemented by the RBI on the banks while accepting SBNs. Therefore in our view the revenue is not correct in assuming that the assessee is the owner of the excess SBN as in Annexure 6A, without examining the ownership factually and without considering the details furnished with regard to the reasons for the difference. One more requirement under section 69A is that the money is not recorded in the books of accounts which in assessee's is not established by the revenue. In this regard we notice that the Managing Director of the assessee while answering the queries raised by the AO during survey has stated on several occasions that the reporting in Annexure 6A is based on the records maintained manually or from Core Banking system of the assessee. Therefore in our considered view, the addition under section 69A cannot be sustained even on the ground that the money is not recorded in the books of accounts. On merits also we notice that the assessee has submitted reasons for the difference in detail with respect to difference in the SBN deposited/exchanged, difference in the closing balance of SBN as 21.12.2016 and difference in the legal tender before the AO. However the AO made the addition stating that the assessee has not substantiated the reasons for the difference with any evidence without appreciating the fact that

the auditors in the SBN audit reported have categorically recorded that no suspicious / malafide transactions with regard to SBN is found and that the RBI has also not given any adverse findings on the Annexure 6A reported revised by the assessee. Further the AO did not consider the factual submission of the assessee that as per the reporting requirement issued by the RBI Annexure 6A includes the money SBN exchanged by the customers across the counter which would not be part of customer balance as per Fincraft. It is also important to note here that the CIT(A) while upholding the additions made by the AO has passed a non-speaking order without giving any specific findings both on the legal contentions as well as on the merits of the case. In view of these discussions and considering the facts of the case in our considered view, the additions made by the AO under section 69A are not sustainable. Accordingly we direct the AO to delete the additions made in this regard.

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

Order pronounced in the open court on 12-11-2024.

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Sd/-
(PADMAVATHY S)
Accountant Member

**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai