

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.483/KOL/2024
(Assessment Year: 2017-18)**

**Sankopara Country Spirit
Shop**

C/o Sunil Chowdhury,
Basudebpur, Chachanda,
Jangipur, Murshidabad, West
Bengal-742224

(Appellant)

ACIT, Circle 42

39, R.N. Tagore Road,
Behrampur, Murshidabad,
West Bengal-742101

Vs.

(Respondent)

PAN No. ABLFS1590B

Assessee by : Shri Saumitra Choudhury, AR
Revenue by : Shri Pradip Kumar Biswas, DR

Date of hearing: 27.11.2024
Date of pronouncement : 02.12.2024

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 18.08.2023 for the AY 2017-18.

02. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of addition of ₹1,40,37,000/- by Id. CIT (A) as made by the Id. AO on account of cash deposit during the demonetization period.
03. The facts in brief are that the assessee was running a country liquor shop during the instant year and filed its return of income on

27.10.2017, declaring total income of ₹ 24,00,100/-. The case of the assessee was selected for scrutiny for examination on large value of cash deposits during demonetization period. Accordingly, statutory notices were issued along with questionnaire, which were replied by the assessee from time to time. The Id. AO called for the information u/s 133(6) of the Act from Oriental bank of Commerce, Jangipur Branch and observed that during demonetization period (from 09.11.2016 to 30.12.2016), the assessee deposited total cash of ₹2,15,77,110/-. The assessee deposited cash of ₹1,60,77,110 and ₹55,00,000/- in two bank accounts namely 15334015000936 & 15331131000532, respectively including SBNs, i.e. Old currency notes the details whereof were given in page 3 & 4 of assessment order. It was further noted that out of ₹2,15,77,110/- deposited in the banks, ₹2,13,12,000/- were in old currencies. Accordingly, show cause notice was issued on 19.11.2019, which were replied by the assessee. The Id. AO after perusing the reply of the assessee observed that the assessee had cash in hand as on 8.11.2016 of ₹71,75,260/- in old currency out of ₹2,13,12,000/-. The AO after allowing the deduction in respect of opening balance of ₹71,75,260/-, computed the net amount of deposit of ₹1,40,37,000/- and treated the same as unexplained u/s 69A of the Act in the assessment framed u/s 143(3) of the Act dated 18.12.2019.

04. In the appellate proceedings, the Id. CIT (A) confirmed the order of the Id. AO by holding and observing as under:-

"6.9

In view of the above facts, I have come to the conclusion that the appellant's response that debts were realized in old notes cannot be accepted since old notes were no longer valid currency/legal tender during this period and could not have been accepted [except by business who were granted exceptions for the same]. The debts in books should have been realized in the new currency alone. The appellant has been able to

explain Rs. 71.75 lakhs as the available cash on hand and the AO has given due consideration for the same. With respect to the remaining deposit of Rs. 1,40,37,000/- the AO's assessment of the same as unexplained money u/s 69A is upheld."

05. After hearing the rival contentions and perusing the materials available on record, including the decisions cited before us by the Id. Counsel for the assessee, we observe that the assessee has been running a country liquor shop and the majority of the sales are in cash. The assessee has explained before the Id. AO and Id. CIT (A) that the deposits into the bank accounts were out of sale proceeds received from sale of liquor in the ordinary course of business. The Id. Counsel for the assessee furnished before us the overall cash sales tallies for F.Y. 2015-16 and F.A. 2016-17 & also for demonetization period as are available in page 9 of the Paper Book. We observe from the said details that during A.Y. 2016-17, the total cash sales were ₹8,54,99,540/- vis-à-vis ₹9,88,88,700 in A.Y. 2017-18. We also note that the total cash sales from 01.04.2015 to 08.11.2015 ₹6,45,26,400/- and during corresponding period in the next year were Rs. 8,63,16,377/-. Similarly, the assessee has furnished the details of cash deposited into bank accounts in both the years i.e. in the preceding A.Y. 2016-17 and current A.Y. 2017-18 in page no. 10 of the Paper Book. We observe from the said details that during A.Y. 2016-17, the total cash deposits in bank were 1,86,92,660/- vis-à-vis ₹2,16,21,110/- for A.Y. 2017-18. Similarly, total cash deposit in bank from 09.11.2015 to 31.12.2015 was ₹63,50,920 vis-à-vis ₹ ₹1,39,75,110 during the same period in the next assessment year. We have also examined the month wise deposits during these two years. The details whereof are attached at page no.12 and 13 of the Paper Book. We have also examined the audited balance sheet, Profit and Loss account for the year ended on 31st March, 2017 and observed that the total sales of the Country Spirit (liquor) were ₹12,48,28,776/-

. Considering all these facts, we are of the view that the cash deposited by the assessee during the demonetization were out of the sale proceeds of the assessee .Moreover the AO as well as Id CIT(A) have not brought any substantive evidences to the contrary on record which proved otherwise. We also note that the sales have been accepted by the authorities below. Similarly, the books of account of the assessee were also accepted. In that scenario, we are unable to understand as to why the cash deposits in that bank accounts are doubted by the lower authorities. In our opinion, the order of Id. CIT (A) upholding the order of Id. AO, seems to be incorrect and cannot be sustained. The case of the assessee finds force from the decision of several co-ordinate Benches namely; in case of Vasanth & Co. Vs. ITO in ITA No. 351/CHNY/2024 dt. 09.10.2024, Ashok Vikram Poddar Vs. ACIT in ITA No. 1294/KOL/2024 dated 08.11.2024, Debraj Sahoo Vs. DCIT in ITA No. 276/KOL/2024 dated 08.08.2024, Ram Kumar Gupta Vs. ACIT in ITA No. 309/KOL/2024 Dt. 09.08.2024, Rohit Jaiswal Vs. DCIT in ITA No.548/KOL/2023 dt. 16.10.2024, Prem Prasad Vs. ITO in ITA No. 12/KOL/2024 dt.23.07.2024. For the sake of ready reference, the operative part of the decision in the case of Vasanth & Co. (*supra*), is extracted below:-

"5. We have heard the rival contentions and perused the material on record. The assessee before us explained that they are in the business of distribution of FMCG products and are the authorised distributor for M/s. Hindustan Unilever Limited, M/s. Britannia Industries Ltd and M/s. Kalleesuvari Refinery Private Limited etc. They purchase in wholesale from the manufacturers and sell them to retail outlets spread over their area of operation. Payments are collected from them either on the same day of sales are in due course. Irrespective of their collection, assessee has to make payments to our suppliers. The Turnover of the assessee for the last three years are as under:

Financial Year 2014-15	43.44 crores.
Financial Year 2015-16	48.17 crores
Financial Year 2016-17	57.93 crores

Assessee is constantly maintaining an average sale of 4 to 5 crores per month and there gross profit ratio is very low and there from they will not be able to extend much of credit to their customers as the same will eat out on our Return on Investments. Assessee's customers range from departmental store to small petty shops and assessee is supposed to cater to all the shops within the area as their principles want the penetration of their product fully in the market. Amounts were received by Cheques/Bank transfers from big customers and in cash from smaller shops. When demonetization was announced there was a scarcity of Quid cash in nondemonetised currencies. Smaller traders had to accept payments from their customers in demonetised and non-demonetised currencies as well because of the fact that non acceptance will lead to fall in sales and put their customers into hardship. The traders in turn started making payments in demonetised currencies to assessee which forced them to accept in order to maintain a smooth working capital cycle. Assessee also enquired with their bankers regarding the same, who in turn advised that they will be accepting payments up to 30th December, 2016. Based on this, assessee was under the bonafide belief that acceptance of cash in demonetised form from identifiable customers is permitted and therefore assessee were accepting from such customers for a few days. As soon as assessee came to know that only specified persons can accept demonetised currency they stopped receiving the same. The amount received during the initial few days were remitted to the bank account. This was the reason for acceptance of the demonetized currency to the tune of Rs.51,05,940/- from their customers, which were remitted in to account then and there. Going by the explanation of the assessee that the cash deposited in SBNs during demonetization period is out of sale proceeds and this issue stands covered in favour of the assessee by the decision of the Co-ordinate of the Tribunal in the case of Tamil Nadu State Marketing Corporation Ltd vs. Assistant Commissioner of Income Tax, Chennai in ITA No.431/Chny/2023 for assessment year 2017- 2018 dated 07.10.2024 and wherein it was 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”.

Since the issue is squarely covered by the decision of the Co-ordinate Bench of the Tribunal in the case of Tamil Nadu State Marketing Corporation Ltd (supra), we allow the ground raised by the assessee and delete the addition made by the lower authorities.

6. In the result, the appeal filed by the assessee stands allowed."

06. Since the facts of the case are substantially same vis-à-vis, the facts of the case are discussed above, accordingly, we are inclined to set aside the order of the Id. CIT (A) and direct the Id. AO to delete the addition by following the above-mentioned decisions. The appeal of the assessee is allowed.

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

Order pronounced in the open court on 02.12.2024.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 02.12.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata