

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.318/Ind/2024
(Assessment Year: 2017-18)

Ujjain Nagrik Sahkari Pedi Maryadit Ujjain Ujjain (Appellant / Assessee)	vs.	ITO 1(2) Ujjain (Respondent/ Revenue)
PAN: AAAAU0360J		
Assessee by	Shri Sharad Jain, AR	
Revenue by	Shri Sanjeev H. Bhagat, Sr. DR	
Date of Hearing	10.12.2024	
Date of Pronouncement	12.12.2024	

ORDER

Per Vijay Pal Rao, VP :

This appeal by assessee is directed against the order dated 28.02.2024 of the Commissioner of Income Tax (Appeal) National Faceless Appeal Centre (NFAC) Delhi, for A.Y.2017-18.

2. Though the assessee has raised various grounds however, the effective grounds are only ground no.1 to 3 reproduced as under:

"GROUND NO. 01: That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in not holding that the issuance of notice U/s. 143(2) and passing of order U/s. 143(3) were wrong, invalid and unjustified.

GROUND NO. 02: That further the confirmation of addition at Rs. 9411000/- , [made U/s. 68 by Ld. AO, and converted as addition U/s. 69A by the Ld. CIT(A)] and levy of tax U/s. 115BBE are wrong, invalid and unjustified as (a) neither conditions mentioned U/s. 68 nor conditions mentioned U/s. 69A are being satisfied; and (b) conversion of section of addition from Section 68 to Section 69A has been made by the Ld. CIT(A) is without jurisdiction and without providing any opportunity of being heard to the appellant.

GROUND NO. 03: That further the order passed by the Ld. CIT(A) U/s. 250 is wrong and invalid because (a) the same has been passed without giving opportunity of being heard to the appellant regarding change of section of addition from Sec. 68 to Sec.69A and (b) the appellant had filed 14 different submissions but except only one, rest submissions and documents therein have been totally ignored."

3. The rest of the grounds in ground no.4 are only in the nature of arguments of the assessee. The assessee is a primary credit Cooperative Society engaged in the business of providing credit facility to its members apart from accepting deposits from the members. The assessee filed its return of income for year under consideration on 18.12.2017 declaring total income of Rs.2,51,080/- . During the scrutiny assessment the AO noted that the assessee has deposited cash of Rs.1,49,74,000/- in old demonetized currency notes of Rs.500 & Rs.1000 during the demonetization period. Accordingly, the AO asked the assessee to explain as to why the difference of Rs.94,11,000/- should not be treated as unexplained. The assessee was also asked to produce the books of account. In reply the assessee filed some confirmations from the persons from whom cash has been collected and also filed copy of day book. The assessee explained that cash has been deposited by the members of the society in their Saving Bank Account, Current Account, RD & FD Account which was then deposited in the bank account of the assessee with Ujjain Nagrik Sahakari Pedi Mydt. Bank. The AO noted

that the assessee has failed to explain the difference of Rs.94,11,000/- and consequently the same was added u/s 68 of the Act r.w. section 115BBE of the Act. The assessee challenged the action of the AO before the CIT(A) but could not succeed.

4. Before the Tribunal Ld. AR of the assessee has submitted that the assessee has explained the source of deposit as the cash was received from the members and customers of the assessee society in the shape of deposits in the Saving Bank Account, Current Account and Fixed Deposit of the respective members/customers. Therefore, the addition u/s 68 of the Act made by the AO ignoring record of deposit made by the members and customers of the assessee society is highly unjustified. He has further submitted that the Ld. CIT(A) has treated the said addition as u/s 69A instead of section 68 of the Act. Ld. AR has further submitted that when the assessee has produced all the relevant records showing deposit made by the members and customers of the assessee society which was in turn deposited in the bank account of the assessee as per day-to-day practice then the addition made by the AO and confirmed by the CIT(A) is not justified. He has further submitted that the assessee also filed confirmation of the members and customers who deposit the cash in their bank account during the demonetization period and that too mostly on 10.11.2016 & 11.11.2016 after the announcement of demonetization. Ld. AR has further contended that all the deposits were made prior to the clarification issued by the RBI on 14.11.2016 and therefore, prior to the said clarification of the RBI the amount was deposited by the members and customers in their bank accounts

which was in turn deposited in the bank account of the assessee society with the Ujjain Nagrik Sahakari Padi Mydt. Bank. He has further submitted that once the transactions are duly recorded in the books of the assessee society then the addition sustained by the CIT(A) u/s 69A of the Act is not sustainable.

4.1 In support of his contention he has relied upon the decision of the Bangalore Bench of the Tribunal dated 13.12.2021 in case of Anantpur Kalpana vs. ITO in ITANo.541/Bang/2021 as well as decision dated 18.02.2022 in case of Shri Bhageeratha Pattina Sahakara Sangha Niyamitha vs. ITO in ITANo.646/Bang/2021. Relying upon these decisions the Ld. AR has submitted that an identical addition made by the AO in those cases have been deleted by the Tribunal on the ground that once the assessee has explained the source of deposit then the addition u/s 68 cannot be made on the ground that the deposit made in the bank account of the members of the society is in contravention of the RBI notification. Ld. AR then submitted that the assessee has also produced the certificate of auditor regarding authenticity of the transactions of deposits made by its customers in the bank account which is also reflected in the cash book/day book of the assessee and as well as in the confirmation and bank account transactions of the respective members/customers. Thus, it was contended that the assessee has explained the source of deposit in question and therefore, no addition can be made u/s 68 or section 69A of the Act.

5. On the other hand, Ld. DR has submitted that after the declaration of specified bank notes as not legal tender from the mid-night of 8.11.2016 the acceptance of bank notes and deposits of the same in the bank account of the assessee is clearly illegal and unauthorized. He has further submitted that the assessee was not authorized under law to accept Specified bank notes (SBN) because the assessee is neither a bank nor an entity which were authorized to accept SBN during the monetization period. The assessee is only a credit Cooperative Society and was not authorized to receive SBN during the demonetization period. Therefore, the claim of the assessee cannot be accepted that the deposit made by the assessee in the bank account in the specified bank notes are the money of its members/customers. He has relied upon the orders of the authorities below. He has further pointed out that the assessee did produce books of account as well as the other documents before the AO for examination and verification.

6. We have considered rival submissions as well as relevant material on record. There is no dispute that the AO has made the addition of Rs.94,11,000/- on account of deposit made by the assessee in its bank account with Ujjain Nagrik Sahakari Padi Mydt. Bank which is a Cooperative Bank. The said deposit was made in the currency notes of Rs.500 & Rs.1000 declared as Specified Bank Notes as per the demonetization notification dated 08.11.2016 issued by the Reserve Bank of India. The assessee explained the source of cash as the amount was received from its members and customers who deposits Specified Bank Notes in their saving bank account and fixed

deposit accounts mostly on 10.11.2016 & 11.11.2016. The CIT(A) has confirmed the addition made by the AO while passing the impugned order and given the reasons in para 6 to 6.4 as under:

"6. The AO treated as unexplained, cash in SBN, amounting to Rs.94,11,000 deposited by the appellant in banks during demonstration. The AO held that these deposits were in excess of the cash balance in books as on 08.11.2016 (the day demonetisation was announced).

6.1 The SBN cash deposited should be either (a) received by the appellant during the period of demonetisation or (b) the unaccounted cash of the appellant not recorded in books. If it is (b), addition made by the AO is beyond reproach. In the paragraph below I examine whether possibility (a) is acceptable.

6.2 The SBN was not legal tender from the midnight of 08.11.2016. It was not legally possible to undertake any valid transaction using SBN. The appellant was also not authorised under law to accept SBN. The appellant is not a bank and only a credit co-operative society. It admits that it does not have a banking license. Such entities were not authorised to receive SBN during demonetisation. Therefore, when the appellant claims that it accepted deposits and repayment of loans from members in SBN, the claim stretches credulity. After all why should any entity accept invalid currency as repayment for a loan validly given? Further, to claim that it accepted SBN during demonetisation is to accept that the appellant committed gross illegality. For the Income Tax Department to accept such an explanation is to overlook the law of the land and public policy. Therefore, the explanation of the appellant that the source of the cash deposited is repayments/deposits made by members is rejected.

6.3 When the appellant made cash deposits in its various bank accounts, the ownership of the cash deposited is not in doubt, it belonged to the appellant only. I have established that the explanation of the appellant for such cash deposit is not satisfactory. Therefore, all the conditions for invoking section 69A(unexplained cash) are satisfied. Therefore, the addition of Rs.94,11,000 is confirmed.

6.4 I find that the AO has made the addition u/s 68 (unexplained cash credits). In this case unexplained cash is in the bank and not in the books of the assessee. Therefore section 68 was the wrong section to invoke. The addition should have been under the section 69A. However, the basic finding of the AO that the cash deposited in SBN in bank during demonetisation is unexplained is valid. An error in invoking the section does not vitiate the addition itself. The addition of 94,11,000 is therefore confirmed."

7. Thus, the addition was sustained by the CIT(A) on the premises that the assessee was not authorized to accept the deposit and payment of loan from the members in SBN and therefore, it is gross illegality committed by the assessee. Further the CIT(A) has held that since it is a case of unexplained cash in the bank account and not in the books of the assessee therefore, section 68 of the Act was wrongly invoked by the AO and consequently the addition was confirmed u/s 69A of the Act. Ld. AR of the assessee has referred to the paper book running into 787 pages and submitted that all the transactions are duly recorded in the books of account of the assessee and therefore, the addition confirmed by the Ld. CIT(A) u/s 69A is not sustainable. We further note that as per the certificate of production of the papers as placed in the paper book it is clear that most of these papers were not produced before the AO but were first time produced before the Ld. CIT(A). Further the assessee has filed the confirmation from the depositors who are the members and customers of the assessee which was also neither verified nor examining by any of the authorities below. Therefore, in order to ascertain that all the transactions are recorded in the books of account of the assessee, the assessee is required to produce the books of account for verification. Hence, in the facts and circumstances of the case when the assessee has produced record running into 787 pages in support of the claim that the deposit made in the bank account of the assessee is sourced from the deposits made by the members and customers of the assessee society. We are of the considered view that the said record is required to be verified at the level of the AO.

Accordingly, the matter is set aside to the record of the AO for proper verification and examination of the relevant record including the books of account of the assessee to ascertain whether all the transactions are duly recorded in the books of account of the assessee or not. The AO then deciding the issue as per law after considering various judgments on the point that if the assessee has established the fact that an amount deposited in the bank account is sourced from the deposits made by the members and customers of the assessee society in their respective accounts then merely because the deposits were made in the Specified Bank Notes cannot be a ground for addition. Needless to say, the assessee be given an appropriate opportunity of hearing before passing the fresh order.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12.12.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Vice President

Indore, 12.12.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore