

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'B' BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 1400/Bang/2024
Assessment Year : 2017-18

Shri Mahesh Lingappa, 572, 4 th Cross, 3 rd Main, RBI Layout, J.P. Nagar 7 th Phase, Bengaluru – 560 078. PAN: ABSPL3289P	Vs.	The Deputy Commissioner of Income Tax, Circle – 4(3)(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Pratibha .R, Advocate
Revenue by	:	Shri Ganesh R. Ghale, Standing Counsel for Dept.

Date of Hearing	:	12-09-2024
Date of Pronouncement	:	06-12-2024

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 27/06/2024 in respect of the Assessment Year 2017-18.

2. The brief facts of the case are that the assessee is carrying on the business of liquor and during the relevant Assessment Year, the return of income was filed declaring the total income at Rs. 18,53,580/-. Thereafter, the case was selected for compulsory scrutiny and notice u/s. 143(1) and 148 was issued to verify the genuineness of the cash deposits of Rs. 50,72,800/-. During the course of the assessment proceedings, the

assessee filed replies and brought to the notice of the AO that his turnover was Rs. 4,49,13,118/- and the sales are only through cash. The assessee also furnished the copies of the bank statement and other supporting documents in response to the notice issued by the AO. The AO not satisfied with the reply had made an addition of Rs. 9,47,700/- u/s. 69A of the Act. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that the assessee is in the business of liquor and filed their return of income based on the sales made by him and also explained that the source for such cash deposits are from the liquor business. The Ld.CIT(A) without considering the issue in detail had come to the conclusion that deposit of SBN in excess of the cash balance could not be accepted since the cash brings into the business was not reflected in the books as a liability and infact the same is not reflected in the capital account. The assessee challenged the said order before this Tribunal and raised the following grounds.

	<i>GROUND'S OF APPEAL</i>	<i>Tax Effect relating to each Ground of appeal</i>
1.	<i>On the facts and in the circumstances of the case, the assessment order passed under Section 147 r.w.s 144B of the Act as confirmed by the CIT(A) is opposed to law and accordingly the same is liable to be cancelled</i>	Rs.
2.	<i>On the facts and in the circumstances of the case, the reopening of assessment under Section 147 of the Act was beyond time and the same is barred by time and accordingly the assessment is liable to be annulled.</i>	Rs.
3.	<i>The learned CIT(A) ought to have appreciated that for mere investigation of cash deposits without having any information to hold that the deposits reflected income of the Appellant, the proceedings under Section 147 of the Act are bad in law and accordingly the reassessment is liable to be cancelled.</i>	

4.	<i>The learned CIT(A) ought to have appreciated that the Appellant is in the business of liquor and he had filed the return of income originally disclosing fully and accordingly the assessment as made by applying the provision of section 69A rws 115BBE of the Act will not applicable to the present case and same is opposed to law and liable to be cancelled.</i>	
5.	<i>The ld. CIT(A) ought to have appreciated the fact that the Appellant has explained the source for cash deposit therefore, the provision of section 69A of the Act will not applicable to the present case. Thus, the addition made has to be deleted</i>	
6.	<i>Without prejudice, the impugned addition as confirmed is arbitrary, excessive, unreasonable and liable to be deleted in toto.</i>	
7.	<i>The learned CIT(A) erred in confirming interest under Sections 234 of the Act</i>	
9.	<i>For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.</i>	
	TOTAL TAX EFFECT	Rs.11,71,997/-

3. At the time of hearing, the Ld.AR submitted that the AO had not considered the explanations offered by the assessee and the source for the deposit of the SBN into the bank accounts and the mere deposit of SBN would not be a reason for making addition u/s. 69A of the Act. The Ld.AR further submitted that the assessee is also a registered dealer under the provisions of the VAT Act and all the sales were accounted for properly in the books of accounts, returns under the VAT Act were filed and the necessary taxes were also paid and pleaded that the entire deposit of SBN is nothing but the amount received by way of sale of liquors. The Ld.AR further submitted that the addition u/s. 69A could not be made for the

reason that the cash was deposited in SBN notes. The Ld.AR further submitted that they had produced the copy of the bank statements as well as the cash book to show that all the monies were received by way of sale of liquor. The Ld.AR also pointed out the other deficiencies in the order and filed a paper book enclosing the cash book, bank statements, reply filed to the notice issued u/s. 142 of the Act and the letter filed by the assessee dated 16/04/2021 and 08/10/2021 and the details of the SBN notes deposited into the bank account and prayed to allow the appeal.

On the other hand, the Ld.DR relied on the order of the AO and submitted that the assessee had deposited the SBN notes for which the source was not properly explained and prayed to dismiss the appeal.

4. We have heard the arguments of both the sides and perused the materials available on record.

5. We have perused the assessment order in which the AO had made an addition u/s. 69A of the Act for the reason that the assessee had deposited SBN notes during the demonetization period in his bank accounts and therefore treated the said deposits as from undisclosed sources. We have also perused the reply filed by the assessee to the show cause notice issued by the AO in which a detailed explanation was offered by the assessee to show that the assessee being a dealer in liquor and most of the sales are effected through cash only. We cannot deny that the customers who are visiting the bar would like to pay the bill amount by cash that too by way of SBN notes since the Government has allowed the public to deposit such SBN notes in their bank account on or before 31/12/2016. There is also no prohibition by the Government that the dealers / traders like the assessee could not receive the SBN notes from their customers if the customers are paying the said amount in SBN notes. It is a fact that since the Government had allowed the public to deposit the SBN notes into their bank account on or before 31/12/2016, the assessee might have thought it fit to accept the said notes, even though the said notes were treated as not a legal tender. It is for the assessee to accept the SBN notes or not as against the bills raised

by them since they are having an opportunity to deposit the said SBN notes into their bank account and converted the same into a legal tender. In this case, the assessee had deposited the SBN notes on or before the dates specified by the Government and therefore even though they are not a valid legal tender at the time of receiving the same from their customers, it could be converted into a legal tender by depositing the said notes into their bank account. The assessee, being a prudent business man, has done this practice and therefore the deposit of SBN notes within the time prescribed by the Government could not be treated as undisclosed income.

6. The Section 69A of the IT Act which deals with unexplained money reads as follows:

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.”*

7. Thus in order to levy tax u/s. 69A, three conditions are need to be satisfied by assessing officer.

- 1) The assessee is found to be the owner of any money, bullion, jewellery or valuable article
- 2) Such money, bullion, jewellery or valuable article is not recorded in the books of accounts if any maintained by him for any source of income.
- 3) The assessee offers no explanation about the nature and source of acquisition of money, bullion, jewellery or valuable article or the explanation offered by him, in the opinion of the AO, not satisfactorily.

8. In the present case, the assessee had deposited the SBN notes into his bank account during the demonetization period and explained before the authorities that the same were received while effecting the sales to their customers. From the paper book filed by the assessee, we are of the view that the assessee had properly accounted all the sales and the cash receipts and the cash deposits. No doubt has been raised by the assessing officer with regard to the documents submitted by the assessee in support of their claim. The only reason for treating the said as unexplained investment is that the assessee had received the SBN notes and deposited the same into their bank account and therefore the same were treated as unexplained investment u/s. 69A of the Act. In the previous paragraphs, we have extracted the provision and the conditions to attract the section 69A of the Act. In the present case, it is an admitted fact that the assessee is the owner of the money and such money was also recorded in the books of accounts and the assessee also offered proper explanations about the nature and source of the said money and in such circumstances, we are of the view that the addition made u/s. 69A is unwarranted.

9. Further, the Ld.AO has treated the SBN notes as not a legal tender but treated the said deposits of SBN notes as income and made an addition u/s. 69A of the Act. This approach is also not correct. When the AO had not accepted the SBN notes as legal tender, then he cannot take the amount as income and treat the same as unexplained investment u/s. 69A of the Act. We have also found that the details of the cash deposits were given in the audited financial statements of the assessee and therefore the said deposits could not be treated as undisclosed income in order to treat the same as unexplained investment u/s. 69A of the Act.

10. Further, we find that the assessee had reported a total income of Rs. 18,53,580/- in the return of income filed for the Assessment Year which includes the incomes earned from the sales made through the SBN notes. In such circumstances, without giving proper deduction of the income

obtained through the SBN from the total income reported by the assessee, again adding the SBN notes as unexplained investment would amount to double taxation and it cannot be permitted under the provisions of the Act. Further, the entire SBN deposits could not be treated as income of the assessee. At the maximum, the AO can work out the profit and the same could be added as income. In this case, nothing has been done by the AO which was also affirmed by the Ld.CIT(A) without giving any valid reasons. Therefore we are inclined to set aside the order of the AO as well as the Ld.CIT(A) and allow the appeal filed by the assessee.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 06th December, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 06th December, 2024.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore