

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A",
CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं./ ITA NO. 274/Chd/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Kasturi Lal C/o Tejmohan Singh, Advocate # 527, Sector 10-D, Chandigarh	बनाम	The ITO, Ward-3, Khanna
स्थायीलेखासं./PAN NO: AAOPL5540N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 24/10/2024

उद्घोषणा की तारीख/Date of Pronouncement : 23.12.2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC, Delhi dt. 16/02/2024 pertaining to Assessment Year 2017-18.

2. In the present appeal, the Assessee has raised the following grounds of appeal:

"1. That the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition of Rs.13,87,000/- made on account of alleged unexplained cash deposit of Specified Bank Notes in the bank account treating the same to be unexplained money of the assessee applying the provisions of Section 69A of the Act which is arbitrary and unjustified.

2. That the provisions of Section 69A are not attracted in as much as the entire business receipts including cash deposit of Rs. 13,87,000/- already stands declared in books on which taxes as applicable have been paid and as such treating Rs. 13,87,000/- to be unexplained is illegal, arbitrary and unjustified.

3. That the Ld. Commissioner of Income Tax (Appeals) has erred on facts in not accepting the availability of cash in hand in the regularly maintained books of account before the date of deposit which is arbitrary and unjustified.

4. That the entire addition and upheld has been made on suspicion, surmises and conjectures in respect of cash deposit which is not permissible under the Act.

5. That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the charging of tax at 60% applying the provisions of Section 115 BBE which are not applicable in the instant case.

6. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

7. That the order of the Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable."

3. Briefly the facts of the case are that the assessment in this case was originally completed under section 143(3) dt. 04/12/2019 accepting the returned income filed by the assessee. Thereafter, pursuant to order passed by the Ld. Pr. CIT under section 263 of the Act, the order under section 143(3) r.w.s 263 r.w.s 144B has been passed on 21/03/2023 wherein the AO has held the sum of Rs.13,87,000/- being the amount of cash deposited in the bank account of the assessee as unexplained money invoking the provisions of Section 69A of the Act. As per the AO, the assessee was running a petrol pump and from examination of its bank account statement maintained with SBI, it was noted that the assessee has been regularly depositing cash in Specified Bank Notes (SBN) stated to have been received by the assessee from cash sales of petrol, diesel etc. As per AO, the Government of India, Ministry of Finance, Department of Economic Affairs, New Delhi vide its Notification dt. 30/11/2016 has amended the earlier notification dt. 08/11/2016 w.e.f 03/12/2016 whereby bank notes of existing series of demonetization of the value of Rs. 500/- and 1000/- were ceased to be legal tender for purchase of petrol, diesel, gas etc. w.e.f 03/12/2016. As per the AO, the assessee has deposited a sum of Rs. 11,46,000/- on 06/12/2016 in SBN of Rs. 500/- and Rs. 1000/- and thereafter on 20/12/2016,

27/12/2016 and 29/12/2016, the assessee has deposited another sum of Rs 2,41,000/- in SBN notes and the assessee was asked to submit its necessary explanation for the source of the said deposits and notice under section 142(1) was issued.

3.1 In response to the notice, the assessee submitted that he was running a fuel station and authorize to receive SBN in lieu of sale of petroleum products upto 02/12/2016 as per notification dt. 08/11/2016 as amended by notification dt. 30/11/2016. It was submitted that as per closing cash in hand as on 02/12/2016, there was cash in hand of Rs. 14,21,101/- out of which Rs. 13,87,000/- were SBN accepted towards cash sale of petroleum products. It was further submitted that out of closing cash in hand on 02/12/2016, no cash was deposited from 03/12/2016 to 05/12/2016. Thereafter, on 06/12/2016, a sum of Rs. 13,50,000/- was deposited out of which Rs. 11,46,000/- were SBN notes which were earlier accepted towards cash sale of petroleum products upto 02/12/2016. It was further submitted that the remaining SBN notes amounting to Rs. 2,41,000/- were again out of cash in hand as on 02/12/2016. However, since the same were kept separately in a drawer and whose keys were misplaced these SBN notes were thereafter deposited on 20/12/2016, 27/12/2016 and 29/12/2016. It was further submitted that the average daily cash sale for F.Y. 2016-17 was around Rs. 4 to 5 lakhs and it was normal to keep cash in hand of around 2 to 4 days of daily cash sales and there were opening / closing cash in hand in the books as on 02/12/2016 were Rs. 16,73,576/- and Rs. 14,21,101/- respectively. It was accordingly submitted that the SBN notes so deposited were out of cash sales of petrol and diesel upto 02/12/2016 and therefore the same should be accepted and in support, copy of the cash book from 02/12/2016 to 29/12/2016, Bank Statement and certificate dt. 25/07/2017 from SBI regarding deposit of currency notes including SBN notes during the demonetization period were submitted.

3.2 Thereafter, the AO issued another show cause on 23/02/2023 and in response to the show cause, the assessee submitted as under:

“With due respect, first of all we would like to state that we are running a fuel station (Petrol Pump) and were authorized to receive Specified Bank Notes (SBN) in lieu of sale of petroleum products up to 02.12.2016 as per Notification No. S.O 3408(E) dated 08.11.2016 as amended by Notification No. S.O. 3598(E) dated 30.11.2016. We accepted SBN only till 02.12.2016, the date up to which we were authorized to accept SBN as per law. As already submitted in the reply filed online on 18.01.2023 in response to notice u/s 142(1), we have closing cash in hand in our books of account as on 02.12.2016 amounting Rs. 14,21,101/- out of which Rs. 13,87,000/- were SBN (comprising 2042 notes of Rs. 500 denomination and 366 notes of Rs. 1000 denomination) accepted towards cash sale of petroleum products. Out of closing cash in hand as on 02.12.2016, no cash was deposited in bank(s) from 03.12.2016 to 05.12.2016. We hereby enclose cash book and bank statement for the financial year 2016-17, from which it can easily be verified that no cash was deposited in bank(s) from 03.12.2016 to 05.12.2016. Hence it is wrong to assume that no cash was deposited in bank(s) from 03.12.2016 to 05.12.2016 is not verifiable.

Reason for Deposit of Rs. 11,46,000 (SBN) on 06.12.2016:

03.12.2016 was Saturday being half working day of banks and hence due to less operating hours as well as undue rush in the banks due to demonetization, we were unable to deposit cash in the bank(s) on 03.12.2016. Banks were closed on 04.12.2016 being Sunday. Due to some personal reasons, I was not able to reach business premises in the banking hours on 05.12.2016, hence the cash was not deposited on that day. Hence the said cash was deposited on 06.12.2016.

We hereby like to state that it is normal practice of each and every business to deposit cash in hand in the bank(s) as per its business need and convenience and it is not mandatory or necessary to deposit cash on next day of business collections. Hence no adverse inference is warranted w.r.t. depositing Rs. 11,46,000/- (SBN) on 06.12.2016 out of cash in hand as on 02.12.2016.

As regards cash in hand on higher side, I hereby state that Our average daily cash sale for the financial year 2016-17 was around 4-5 lakhs. Hence it is normal to keep cash in hand of around 2-4 days of daily cash sales. Hence opening as well as closing cash in hand in our books of account as on 02.12.2016 amounting Rs. 16,73,576/- and Rs. 14,21,101/- respectively is normal cash in hand in the ordinary course of our business generated from known source of income duly accounted for in the books of account of the firm. This cash in hand was lying in the our books of account being generated in the normal course of business by cash sale of petrol and diesel and no cash was accepted in the books other than sale of petroleum products, hence proposing addition in income by inferring that cash in hand in the books of account is on the higher side is legally and factually uncalled for. Moreover, it can easily be verified from the cash book attached herewith that cash in hand of such magnitude was there on many dates during the financial year 2016-17.

As regards deposit of Rs. 2,41,000/- (SBN), as already submitted, I hereby state that cash amounting Rs. 2,41,000 (SBN) out of closing cash in hand as on 02.12.2016 were separately lying in small table drawer, the keys of this drawer

were misplaced on 03.12.2016 and when we opened the drawer on 20.12.2016 after the misplaced keys were traced out, then we deposited the same in bank account, detail as under;

Date of deposit	SBN Denomination	No. of SBN	Total Rs.
20.12.2016	1000	220	2,20,000/-
27.12.2016	500	8	4,000/-
29.12.2016	500	34	17,000/-

It is a fact that cash in hand in the books of account was generated out of genuine cash sale of petroleum products duly accounted for in the books of account on daily basis. Moreover, operation of petrol pump is strictly monitored by oil marketing companies (Bharat Petroleum Corporation Ltd in our case). Sale of petroleum products is made through automated delivery machines duly recorded on daily basis in prescribed stock registers. Copy of daily stock register for Dec.2016 is attached herewith for verification of daily sale made. Also, sale price of diesel and petrol are regulated by oil marketing companies. The closing cash in hand of Rs. 14,21,101/- on 02.12.2016 in our books of account is out of genuine day to day sale of petroleum products, and this sale figure is already a part of total sale/revenue of our firm, hence taxing the same cash in hand again as income is against basis principle of taxation of income i.e. taxing the same in twice.

In view of the submission made above, it is apparent that addition in return of income due to proposed variations of Rs. 13,87,000/- is legally and factually uncalled for in the facts and circumstance of case brought out above.

So, it is humbly requested not to take any adverse view in the matter and assess our case accordingly

We hereby enclose following documents;

1. Cash book for FY 2016-17.
2. Bank statement of State Bank of India, CC A/c No. 00000034329473451
3. Daily Stock Register for Dec,2016"

3.3 The submissions so filed by the assessee were considered but not found acceptable to the AO. As per the AO, it is a fact that the assessee was running a fuel station and was authorized to receive SBN notes in lieu of sale of petroleum product upto 02/12/2016 and it is also a verifiable fact that no cash was deposited on 03/12/2016 to 05/12/2016. However on 06/12/2016, out of Rs. 13,87,000/- available as SBN Notes, the assessee has deposited only Rs. 11,46,000/-. Further assessee has made cash deposits of Rs. 2,20,000/-, 4,000/- and Rs. 17,000/- on 20/12/2016, 27/12/2016 and 29/12/2016 respectively and the

reasons for not depositing of the SBN notes on 06/12/2016 has not been furnished. Further the copy of the cash book of 02/12/2016 only has been furnished wherein the opening cash in hand is Rs. 16,73,576/- which is apparently on the higher side. Keeping in view the fact that the cash sales on 02/12/2016 is only Rs. 4,60,000/-, the AO thereafter took a decision and held the entire amount of cash deposit i.e. 13,87,000/- as unexplained money and brought the same to tax under section 69A r.w.s 115BBE of the Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since sustained the said addition. Against the said findings and directions, the assessee is in appeal before us.

5. During the course of hearing, submissions made before the lower authorities were reiterated and our particular reference was drawn to the certificate issued by the SBI wherein there were regular deposit of SBN notes right from 08/11/2016 to 06/12/2016 and the transaction value of deposit of each day ranges from Rs. 3,00,000/- to Rs. 9,00,000/- and it was submitted that no adverse findings has been recorded by the AO as far as the deposit of SBN notes till 02/12/2016 and only in respect of deposit of SBN notes on 06/12/2016 and thereafter on three other dates, the same has not been found acceptable by the AO for the reason that the same was not deposited on the next day but was deposited on 6/12/2016.

6. It was submitted that the reasons why the deposit of SBN could not be made on the next working day was duly submitted to the AO as next day was i.e, 03/12/2016 was Saturday and 04/12/2016 was Sunday and on Monday the assessee due to certain personal reasons could not visit the bank and therefore the cash was deposited on 06/12/2016. It was submitted that merely because the cash couldn't be deposited on the next day cannot result in cash so received against sale of petroleum products as unexplained.

7. It was further submitted that the AO has invoked the provisions of Section 69A of the Act and the said section can only be invoked where the cash has not been recorded in the books of account and in this case, the cash of Rs. 13,87,000/- deposited in the bank account are duly entered into books of account which are duly audited and accepted by the AO therefore there cannot be any addition under section 69A of the Act.

8. It was further submitted that the AO has failed to appreciate that the cash deposited in the bank account was out of the cash sale of petrol and diesel and closing cash balance of Rs. 14,21,101/- was duly reflected as on 02/12/2016 and which has been straight away ignored by the AO while making the subject addition. It was submitted that cash sales were duly included as part of the overall sale reported to tax and therefore the addition of Rs. 13,87,000/- so made will amount to double taxation.

9. It was accordingly submitted that the cash book so submitted before the lower authorities from 02/12/2016 to 29/12/2016 shows closing cash balance as on 02/12/2016 of Rs 14,21,101/- which is sufficient enough to justify the cash deposit of Rs. 13,87,000/- from 03/12/2016 to 29/12/2016 during the demonetization period and therefore the assessee has furnished a reasonable explanation with regard to the nature and source of the cash deposit in the form of SBN notes and no material has been brought on record by the AO to draw inference that the explanation offered by the assessee was incorrect or unreasonable or that the sum represented income of the assessee from undisclosed sources as against the entries recorded in the books of account. It was submitted that once the cash sale recorded in the books of account have been accepted, the cash deposit against such cash sale cannot be treated as undisclosed income without bringing on record any credible evidence in support of such allegation and the addition cannot be made that too by invoking the deeming provision under section 69A of the Act.

10. Further reliance was placed on the Coordinate Chandigarh Benches decision in case of Rachit Aggarwal (Prop.) Ashok Kumar Gupta & Co. Vs. ITO 162 Taxmann.com 49, Fashion Zone Vs. JCIT in ITA No. 331/Chandi/2023 and Smt. Charu Aggarwal Vs. DCIT in ITA No. 310/Chandi/2021.

11. Per contra, the Id DR has relied on the findings of the lower authorities and our reference was drawn to the findings of the Id CIT(A) which read as under:

"5.2 The addition made by the AO and the submissions of the appellant have been perused. It is seen from the assessment order and the submissions that the appellant made cash deposits after 03.12.2016 wherein the Government of India, Ministry of Finance, Department of Economic Affairs, New Delhi, vide its Notification No.S.O.3598(E) dated 30.11.2016 has amended the notification bearing S.O.No.3408(E) dated 08.11.2016 applicable w.e.f.03.12.2016 as clause (e) has been omitted by notification dated 06.11.2016, therefore bank notes of existing series of demonetization of the value of Rs.500/- and Rs. 1000/- were ceased to be legal tender for purchase of petrol, diesel, gas etc., w.e.f.03.12.2016. On verification it is found that the appellant deposited cash of Rs.13,87,000/- as detailed in the assessment order by the AO after 03.12.2016 wherein the appellant is not an authorized agent to collect SBNs and deposit in bank account in view of amendment made by Government of India. On the other hand, the appellant contended that as per the Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016, which came in to effect from 31.12.2016 appointed date for this purpose means 31.12.2016 and up to the appointed date i.e. 31.12.2016, there is no prohibition for dealing with SBNs and also contended that he had not accepted SBNs after 02.12.2016. The appellant also stated that his closing cash in hand in his books of account as on 02.12.2016 was Rs.14,21,101/- out of which Rs.13,87,000/- were SBN. It is to note that the appointed date 31.12.2016 is for individual persons who can directly deposit SBNs in their accounts up to 31.12.2016. However, the persons who are in the business of running petrol bunks/gas agencies selling petrol/diesel/gas was ceased to be legal tender and they are not allowed to collect SBNs after 02.12.2016 as per amendments made by Government of India. The appellant has not brought on record to show that the cash balance as on 02.12.2016 was Rs.14,21,101/- with documentary evidences. It is seen from the submissions that the appellant has not given statement of collections made from 03.12.2016 till 31.12.2016 and its deposit in bank account to substantiate his contention. The AO has verified and found that the appellant's collection as on 02.12.2016 is only Rs.4.60 lakhs. It clearly shows that the appellant collected SBNs after 02.12.2016 and the same was deposited in the bank account. In view of the above, the appellant was not an authorized person to collect SBNs after 02.12.2016 and therefore, the action of the AO is upheld and grounds of appeal raised in this regard are dismissed. Further, charging of tax as per provisions of Section 115BBE of the Act is also upheld as the disallowance was made as per provisions of Section 69A of the Act."

12. We have heard the rival contentions and pursued the material available on record. In the instant case, the assessee was running a fuel station and was authorized to receive SBN notes in lieu of sale of petroleum product upto 02/12/2016. The sales so made and cash so received has been recorded in the books of accounts and the sales have already been offered to tax and has not been disputed by the AO. During the course of assessment proceedings, the assessee has filed copy of daily stock register for the month of December, copy of the cash book for the period 2/12/2016 to 29/12/2016, copy of bank statements, certificate obtained from SBI regarding deposits in SBN Notes and audited financial statements. No adverse finding has been recorded by the AO except raising a suspicion that the opening cash in hand as on 02/12/2016 of Rs. 16,73,576/- was apparently on the higher side, however, what's the basis of such suspicion and what further verification/examination has been carried out by the AO has not been spelt out. Merely raising a suspicion cannot form the basis to discredit the books of accounts and cash book so submitted during the course of assessment proceedings. Further, the fact that cash so received couldn't be deposited with the bank on the next day and deposited on 06/12/2016 again cannot be a reason to arrive at a finding that cash so deposited is unexplained and negating the explanation and corroborative documentation so submitted by the assessee that the cash so deposited is out of cash sales made on or before 02/12/2016 and there were reasonable explanation submitted for the delay in deposit. The fact that the bank has accepted the deposit of SBN Notes on 6/12/2016 and thereafter, on few more occasions during the month of December 2006 shows that there was no bar on deposit of such SBN notes during the month of December 2006. However, the factum of deposit on 6/12/2016 and subsequent dates cannot lead to conclusion that SBN notes have been received by the assessee against sale of petroleum products subsequent to 02/12/2016 in absence of bringing any material on record and the same is clearly in the realm of suspicion which cannot form the basis of

making the addition in the hands of the assessee. We therefore agree with the contention of the Id AR that closing cash balance as on 02/12/2016 of Rs 14,21,101/- was sufficient to justify the cash deposit of Rs. 13,87,000/- from 03/12/2016 to 29/12/2016 during the demonetization period and the assessee has furnished a reasonable explanation with regard to the nature and source of the cash deposit in the form of SBN notes out of cash sales made on or before 02/12/2016. In light of the same, the addition so made by invoking the deeming provision under section 69A of the Act cannot be sustained and is hereby directed to be deleted.

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

Order pronounced in the open Court on 23.12.2024.

Sd/-

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER
AG

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar