

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

Before Shri Duvvuru RL Reddy, Vice-President (KZ)

**I.T.A. No. 1860/KOL/2024
Assessment Year: 2017-2018**

***K.T. Handlooms,.....Appellant
R.B. Basu Sarak, Sadarghat,
Burdwan-713103, West Bengal
[PAN:AAOFK4187G]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-2(1), Burdwan,
Aayakar Bhawan,
Court Compound, Burdwan-713101,
West Bengal***

Appearances by:

*Shri Bishewar Ghosh, A.R., appeared on behalf of the
assessee*

*Ms. Madhumita Das, Addl. CIT, appeared on behalf of
the Revenue*

Date of concluding the hearing: January 08, 2025

Date of pronouncing the order: March 21, 2025

O R D E R

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 27th February, 2024 passed for Assessment Year 2017-18.

2. The appeal is time barred by 123 days in filing the appeal by the assessee. However, the partner of the assessee-company Sk. Rejhaul Islam filed an affidavit dated 27th August, 2024 saying that the assessee is not aware of the order passed by the ld. CIT(Appeals) and that time he was bed-ridden with chronic sciatica pain. When the assessee came to know about the order passed by the ld. CIT(Appeals), the assessee approached the ld. A.R. to prefer an appeal, due to that there was a delay of 123 days in filing the appeal before the Tribunal. Therefore, he pleaded to condone the delay.

3. Considering the facts and circumstances of the case, I am inclined to condone the delay since the delay is not due to negligence on the part of assessee and the assessee has established sufficient cause to condone the delay. Hence the delay is condoned.

4. Brief facts of the case are that the assessee is engaged in the business of wholesale trade of bed-sheets, bed-covers, pillow covers, curtains, mats and other related handloom items and filed its return of income declaring total income of Rs.7,86,260/-. The case of the assessee was selected for scrutiny through CASS and accordingly notice under section 143(2) of the Act was issued and served upon the assessee. In response to the notice under section 142(1), the assessee has stated before the ld. Assessing Officer that the source of cash deposit during demonetization period was out of cash sales and out of cash in hand, but the ld. Assessing Officer has not considered the same and added to the total income of

Rs.39,48,500/- since the assessee failed to furnish the details and source for cash deposits.

5. On being aggrieved, the assessee preferred an appeal before the Id. CIT(Appeals).

6. After considering the submissions of the assessee, the Id. CIT(Appeals) partly allowed the appeal of the assessee by considering an amount of Rs.9,72,395/- as unexplained source as cash in hand and the balance amount of Rs.29,76,105/- as unexplained cash deposit.

7. On being aggrieved, the assessee preferred an appeal before the Tribunal and raised the following issue:-

“The CIT(Appeals), NFAC erred in not deleting Rs.29,76,105/- as added by the AO u/s 69A of the Act when the conditions to invoke the said section are not met in this instant case.”

8. I have heard both the sides. The only grievance of the revenue is that the source of total cash deposit of Rs.39,48,500/- is out of Rs.9,72,395/- kept as cash in hand and the balance amount of Rs.29,76,105/- is out of sale proceeds received during demonetization period. Therefore, there is no ambiguity between the appellant and the revenue authorities that cash deposit of Rs.39,48,500/- consists the sale proceeds of Rs.29,76,105/- received during demonetization period. Hence, the main question whether the appellant has any right to receive the Specified Bank Notes during demonetization or not. It was the submission of the Id. Counsel for the assessee that the assessee is engaged in the

wholesale dealer of handlooms and its total turnover for the relevant assessment year is Rs.10,30,53,000/-, out of which only an amount of Rs.39,48,500/- was deposited by the assessee during demonetization and out of which Rs.9,72,395/- has shown as cash in hand and the same was considered by the Id. CIT(Appeals). He further submitted that the only grievance of the revenue authorities is that the assessee has received Specified Bank Notes during demonetization period and deposited the same in the Bank account. On this aspect, it was the submission of the Id. Counsel for the assessee that there is no ban to receive the Specified Bank Notes on or before 31st December, 2016. He further submitted that all the said amounts have received and deposited much prior to 31.12.2016 and the assessee has explained the source for cash deposits. He further submitted that the assessee had no other source of income except the handloom business. He further submitted that there is no prohibition under the demonetization Act to receive the Specified Bank Notes. The Id. Counsel for the assessee has heavily relied on the decision dated 18th July, 2023 of the Coordinate Bench of ITAT, Mumbai in the case of ITO -vs. Zee Bangles Pvt. Limited in ITA No. 815/MUM/2022. He, therefore, pleaded to set aside the orders passed by the revenue authorities.

9. On the other hand, Id. Departmental Representative has submitted that the assessee's case not entitled to receive the Specified Bank Notes and it is also illegal activity. He further submitted that even though the assessee has explained the source for cash deposits out of its cash sales, but he received the Specified

Bank Notes and deposited during demonetization period. Therefore, the revenue authorities have rightly made the addition under section 69A of the Act. He pleaded to uphold the orders passed by the ld. Assessing Officers as well as the ld. CIT(Appeals).

10. I have perused the relevant material available on record and also the decisions filed by the assessee along with the paper book. It is an admitted fact that the turnover of the assessee is Rs.10,30,53,000/-, out of which only an amount of Rs.39,48,500/- of Specified Bank Notes was deposited by the assessee during demonetization period. It is also an admitted fact that the ld. Assessing Officer has not disputed the source of cash deposits but the only grievance of the ld. Assessing Officer is that the assessee has received Specified Bank Notes and deposited the same during demonetization period, which is illegal and there is a bar to except old currency notes and the ld. Counsel for the assessee has produced the sale register and ledger account of the assessee. The revenue authorities also not disputed the sale transactions of the assessee, but the only objection of the ld. Assessing Officer as well as ld. CIT(Appeals) was that the assessee has accepted the Specified Bank Notes. Even though Reserve Bank of India has prohibited dealing with Specified Bank Notes from 08.11.2016 onwards except for certain emergency services. On this aspect, I do not find any merit in the reasons given by the ld. Assessing Officer and ld. CIT(Appeals). No doubt, from 08.11.2016 midnight onwards, demonetization currency notes of Rs.500/- and Rs.1,000/- were legally banned, but the RBI has issued various guidelines and SOPS for dealing with Specified Bank Notes from

08.11.2016 onwards till Cessation of Liabilities Bill, 2017 for Specified Bank Notes, was notified by the Government. The Bill provides that the specified bank notes (old Rs 500 and Rs 1,000) will cease to be liabilities of the Reserve Bank of India (RBI) from December 31, 2016 onwards. Further, these notes will no longer be guaranteed by the central government. As per the said Bill from the 'appointed date', no person shall knowingly or voluntarily hold, transfer or receive any Specified Bank Notes, which is punishable offence and prohibited by law.

10.1. Further according to Section 3 of the above said bill, on and from the appointed day, notwithstanding anything contained in the Reserve Bank of India Act, 1934 (2 of 1934) or any other law for the time being in force, the specified bank notes which have ceased to be legal tender, in view of the notification of the Government of India in the Ministry of Finance, number S.O. 3407(E), dated the 8th November, 2016, issued under sub-section (2) of section 26 of the Reserve Bank of India Act, 1934, shall cease to be liabilities of the Reserve Bank under section 34 and shall cease to have the guarantee of the Central Government under sub-section (1) of section 26 of the said Act.

11. From the above Bill, it is clear that upto 'appointed date', i.e. 31.12.2016, there is no restriction in holding or receiving Specified Bank Notes, even though legal tender is banned from 08.11.2016 onwards. Therefore, I am of the view that there is no blank prohibition of receiving specified bank notes upto 31.12.2016. In this case, admittedly, the assessee has explained the source of its

cash deposits and the revenue authorities were not disputing the same. Therefore, I am of the view that when the assessee has explained the reasons for accepting these Specified Bank Notes, even after 08.11.2016. The Id. Assessing Officer ought to have accepted the explanation furnished by the assessee, when he is not disputing the nature of business and source for cash deposits as discussed above. Therefore, as per the above detailed discussion, the Id. Assessing Officer is not right in making the addition towards cash deposit. On this aspect, several Coordinate Benches of the Tribunal have taken the same view. The relevant findings of the ITAT, Visakhapatnam Bench are as under:-

"9. We have heard both the parties and perused all the documents on record. We find that there was sufficient cash balance with the assessee as detailed in page No. 30 of the paper book. The Specified Bank Notes (Cessation of Liabilities) Act, 2017, defines "appointed day" vide Section 2(l)(a). As per Section 2(l)(a), "appointed day" means the 31 Day of December 2016. Section 5 of the Specified Bank Notes (Cessation of Liabilities) Act, 2017 also deals with prohibition on holding, transferring or receiving specified bank notes. Section 5 states that "On and from the appointed day, no person shall knowingly or voluntarily, hold, transfer or receive any specified bank note". We therefore, find that the specified bank notes can be measured in monetary terms since the guarantee of the Central Government and the liability of Reserve Bank of India does not cease to exist till 31.12.2016. In view of the above, the contention of the Ld. DR, treating the receipt of SB Ns from cash sales as illegal and thereby invoking the Provisions of section 69A is not valid in law. Therefore, we dismiss this ground of the Revenue."

12. In view of the decision of the Coordinate Bench of ITAT, Visakhapatnam dated 16th March, 2022 in ITA No. 76/Viz./2021 in the case of ITO -vs.- Sri Tatiparti Satyanarayana, I am of the firm view that the Id. Assessing Officer as well as Id. CIT(Appeals) has erred in sustaining the addition towards cash deposits to the

Bank account under section 69A of the Act and levied tax under section 115BB of the Act. Hence, I direct the ld. Assessing Officer to delete the addition made towards cash deposits to the Bank under section 69A of the Act. Therefore, the grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 21/03/2025.

Sd/-
(Duvvuru RL Reddy)
Vice-President (KZ)

Kolkata, the 21st day of March, 2025

- Copies to :(1) K.T. Handlooms,
R.B. Basu Sarak, Sadarghat,
Burdwan-713103, West Bengal
- (2) Income Tax Officer,
Ward-2(1), Burdwan,
Aayakar Bhawan,
Court Compound, Burdwan-713101,
West Bengal
- (3) CIT(Appeals), NFAC, Delhi;
(4) CIT - ;
(5) The Departmental Representative;
(6) Guard File

TRUE COPY

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.