

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 93/CHNY/2025
निर्धारण वर्ष/Assessment Year: 2017-18

M/s. Asok Sparks, 468, PKS Arumugandar Road, Sivakasi, Virudhunagar – 626 189.	Vs.	The ACIT, Circle 1, Virudhunagar.
[PAN: AAUFA-8489-K] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Mr. N. Arjun Raj, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. Anitha, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 08.04.2025
घोषणा की तारीख/Date of Pronouncement : 28.04.2025

आदेश / O R D E R

PER S.R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 27.11.2024 for the assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:-

- The order of the NFAC, Delhi dated 27.11.2024 vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1070681361 (1) for the above mentioned Assessment Year is contrary to law, fact and in circumstances of the case.*
- The NEAC, Delhi erred in sustaining the addition of Rs.32,00,000/- being the cash deposits in SBNs during demonetisation period as unexplained in*

terms of Section 68 in the computation of taxable total income without assigning proper reasons and justification.

3. *The NFAC, Delhi to appreciate that provisions of Section 68 of the Act had no application to the present facts and in circumstances of the case, there by vitiating the findings in relation there to.*
4. *The NFAC, Delhi failed to appreciate that the pre-requisite conditions required for making an addition in terms of Section 68 of the Act were absent in the present case and in circumstances, there by negating the findings in relation there to.*
5. *The NFAC, Delhi failed to appreciate that having not examined / rejected the books of accounts including the VAT returns, which were made available at every stage of proceedings, the presumption of unexplained money should be reckoned as wholly unjustified and not sustainable in law.*
6. *The NFAC, Delhi failed to appreciate that in any event having not independently examined the nature of the cash deposits made earned from the sale of firecrackers, the consequential sustenance of the entire addition as unexplained credit in terms of Section 68 of the Act was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.*
7. *The NFAC, Delhi failed to appreciate that the findings in relation there on in the impugned order were wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.*
8. *The NFAC, Delhi failed to appreciate that the entire re-computation of taxable total income was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.*
9. *The NFAC, Delhi failed to appreciate that having not adhered to the prescription of faceless appellate regime, the consequential appellate order passed should be reckoned as bad in law.*

10. *The NFAC, Delhi failed to appreciate that there was no effective/proper opportunity given before passing the impugned order including non granting of personal hearing and any order passed in violation of the principles of natural justice is nullity in law.*

11. *The Appellant craves leave to file additional grounds/arguments at the time of hearing.*

3. The brief facts of the case are that the assessee is a partnership firm and is engaged in the business of manufacturing and wholesale of fireworks. The assessee filed its return of income for the A.Y.2017-18 ON 30.10.2017 admitting a total income of Rs.12,07,390/- and the same was processed u/s.143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and statutory notices were issued to the assessee. During the A.Y. 2017-18 the assessee had deposited SBNs to the tune of Rs.32,00,000/- in the months of November and December 2016. The assessee has claimed that the above SBN was received from customers. The AO has made an addition of Rs.32.00 Lakhs as unexplained money u/s.69A of the Act stating that the assessee was prohibited to transact in SBN as per the demonetisation notification of w.e.f 09.11.2016 and passed an order u/s.143(3) of the Act on 21.12.2019.

4. Aggrieved by the order of the AO the assessee preferred an appeal before the Id.CIT(A), NFAC.

5. The assessee submitted a written submission before the Id.CIT(A), NFAC as detailed below:

- *The addition on account of cash made by the AO is erroneous since the same was duly accounted for in the books of accounts as business receipts. The AO without verifying the books of accounts for the transactions recorded, the additions were*

made u/s.68 of the Act on the ground that the assessee ought not to have received SBNs.

- *The assessee has maintained proper books of accounts, wherein all the transactions of sale of fireworks, realization, bank deposits were properly recorded. Thereby it cannot be treated as unexplained or undisclosed.*
- *The Income Tax Act itself a self-contained code and how the income should be computed is also properly provided and therefore the demonetized currency deposited relating to business transaction could not be treated as unexplained and hence additions cannot be made u/s.68 of the Act.*
- *Further, the assessee stated that in the firework industry, during non seasonal period the customers used to give advance to purchase fireworks at a discount rate. Using the demonetization period the customers of the assessee had booked for fireworks at a discounted rate. Therefore, there is no justification to treat these cash advances as unexplained cash credit u/s.68 of the Act.*
- *The outstation parties had directly deposited the SBN in the bank account and after furnishing the name, PAN, address along with the evidence for having supplied the goods, the parties are identified and are genuine in nature and hence no additions is called for on these deposits.*
- *The assessee is a registered dealer under VAT and had been filing monthly VAT returns and these transactions also properly recorded in the books of accounts as business transactions and thereby the AO cannot simply treat the same as unexplained income.*

6. However, the Id.CIT(A), NFAC was not convinced with the submissions of the assessee and dismissed the assessee's appeal by confirming the order of the AO by passing an order dated 27.11.2024.

7. Aggrieved by the order of the Id.CIT(A), the assessee is before us.

8. The Id.AR for the assessee submitted that the Id.CIT(A) has erred by confirming the action of the AO in making addition of cash deposit in SBNs without rejecting the books of accounts and by doubting the genuineness of the opening balance of creditors as on 31.03.2016. Further, the Id.AR submitted the paper book in support of his grounds of appeal 157 pages consisting of Audited financials of assessee as on 31.03.2017, Tax audit report in Form 3CB and 3CD, return of income, summary of cash deposits from 01.04.2015 to 31.03.2018, Bank pass sheet of City Union bank, Assessment Order passed by the commercial tax department, ledger account of CST & VAT payment, Purchase ledger for the financial year 2016-17 and invoices raised for sales made to the parties Agra Lalit Traders, Lucknow Royal fireworks, Allahabad Prayag Trading Agencies along with the respective ledger accounts to show the sales and amount received from them. The Id.AR stated that the assessee has been regularly filing the VAT returns and has declared the Sales made to the above said parties corresponding to the cash deposited in SBN during the demonetisation period in the city union bank account of the assessee. Further, the Id.AR drew our attention to the pass sheet in page No.75 of the PB and shown that these amounts are deposited in SBN during the demonetisation period directly into the current account held by the assessee by the customers' existing at Allahabad, Kanpur and Lucknow. Similarly, the Id.AR took us through the ledger account of the above said customers (Page No.88, 95 & 104 of the paper book) wherein the sales bills raised (Page Nos. 89 to 94 of paper book – Lalit Traders, Agra) (Page Nos. 96 to 103 of paper book – Royal Fireworks, Lucknow) (Page Nos. 104 to 110 of paper book – Prayag Trading Agencies, Allahabad) have been duly accounted against the cash deposits in SBNs made by the customers into the current account held by the assessee in City Union bank. The Id.AR also argued that

the said sales invoices have been duly recorded in the books of accounts and shown to the Sales tax department in the monthly returns filed as CST turnover and discharged the applicable CST. Further, the Id.AR also submitted audited financials along with the audit report of the assessee as on 31.03.2016 in (page No.1 to 12 of Paper Book II) to show that the balances of the customers are carried from earlier financial year and their ledger accounts (Page No.13 to 20 of paper book II) and also subsequent assessment year 2018-19 and shown us the business transactions carried out with them.

9. Further, the Id.AR also submitted that there is no prohibition to accept SBNs during the demonetization period by the assessee, as per the Specified Bank Notes (Cessation of Liabilities) Act, 2017, no person shall accept or transact any SBNs from the appointed date. As per said Act, appointed date is 31.12.2016. From the above, it is very clear that up to appointed date, persons can transact in SBNs. However, the only requirement is, they should be able to establish source for said cash deposits. The Id.AR stated that the assessee has proved that the source of cash deposit was from the business. To buttress his argument the Ld.AR relied on the following decisions of this Tribunal held in favour of the assessee.

- a) *Shri Raju Dinesh Kumar Vs. DCIT – ITA No.1321/2023 dated 19/01/2024*
- b) *M/s.Micky Fireworks Industries Vs. ACIT – ITA No.264/2023 dated 26/07/2023*
- c) *Mrs.Umamaheshwari Vs. ITO - ITA No. 527/Chny/2022 dated 14/10/2022*
- d) *Amar Sparklers Factory vs ITO - ITA No. 808/Chny/2023 dated 11/10/2023*

10. Therefore, the Id.AR submitted that both the AO and that of the Id.CIT(A) have erred in treating the cash deposit made in SBN by the customers of assessee to its bank account as unexplained money inspite of furnishing the entire details of

corresponding sales, books of accounts, audited financials with tax audit report without rejecting the books of accounts. Hence prayed for setting aside the order of the Id.CIT(A) and delete the addition made by the AO.

11. Per contra, the Id.DR supported the orders of the lower authorities.

12. We have heard both the parties, perused materials available on record, all the paper books and gone through orders of the authorities below. Admittedly the assessee is carrying on the business of fireworks and filed its return of income for the A.Y. 2017-18. In the scrutiny assessment the AO has made an addition of Rs.32.00 Lakhs as unexplained money on account of cash deposit in SBN during the demonetisation period. The same has been confirmed by the Ld.CIT(A) stating that the assessee has not shown the closing balances of the customers as on 31.03.2016 who have deposited the SBN during the demonetisation period. We note that the assessee has submitted the audited books of accounts, Audit report, ledger accounts of the customers, bank statements, VAT returns and CST payment details before the lower authorities. Further, we have observed that the assessee has filed its return of income with the tax audit report for the A.Y. 2016-17 also. We find that the assessee's turnover has been accepted by the commercial tax department for the F.Y.2016-17 by passing an order dated 11.12.2018, shows that the assessee has supplied goods the customers who have deposited cash in SBN during the demonetisation period. Further we find that the assessee has furnished all the details of the customers like name, addresss, PAN, GST No, copies of invoices raised along with the ledger account of the customers. Therefore, we cannot countenance action of the AO in rejecting assessee's explanation of source for cash deposit made in SBNs by the customers directly to the bank account of the assessee.

13. As argued by the Id.AR even the cash deposited in SBN had been collected during the demonetisation, which was not prohibited as per the Specified Bank Notes (Cessation of Liabilities) Act, 2017. We find force in the argument of the Id.AR, since this issue is covered in favour of the assessee by the decisions of this Tribunal in the following case Shri Raju Dinesh Kumar vs DCIT (Supra), where the Tribunal under the identical set of facts deleted the additions made by the Assessing Officer, after considering this tribunal's following decisions:

- a) *M/s.Micky Fireworks Industries Vs. ACIT – ITA No.264/2023 dated 26/07/2023*
- b) *Mrs.Umamaheshwari Vs. ITO - ITA No. 527/Chny/2022 dated 14/10/2022*
- c) *Amar Sparklers Factory vs ITO - ITA No. 808/Chny/2023 dated 11/10/2023,*

by holding as under:

“9. *We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The facts borne out from the record clearly indicate that the assessee is running a dhall mill and manufacturing various kinds of dhalls. The facts brought on record by the AO further indicated that the assessee procures various kinds of pulses from local market and manufacturing into various kinds of dhalls and sells to unregistered dealers in cash. The assessee has filed comparative cash sales and cash deposits into bank account for FY 2015-16 & FY 2016-17 and also cash sales and cash deposits for the month of October & November, 2015 and October & November, 2016. On perusal of details filed by the assessee, which has been reproduced by the AO in the assessment order, we find that there is no abnormal variation in cash sales and cash deposits into bank account for FY 2015-16 & FY 2016-17. Further, the cash sales achieved by the assessee for FY 2015-16 is higher than the cash sales reported for FY 2016-17. From the details filed by the assessee, it is abundantly clear that there is no sudden increase in cash sales during demonetization period when compared to earlier Financial Years. Further, the assessee has filed cash book and other details to prove availability of cash in hand as on 08.11.2016 at Rs.71,76,208/-. In fact, the AO is not disputed the fact that the assessee has filed cash book and as per said cash book, cash in hand as on 08.11.2016 was at Rs.71,76,208/-. If you go by the nature of business of the assessee and sales trend, it is undoubtedly clear that the assessee's sales predominantly in cash, and thus, the cash in hand shown by the assessee as on*

08.11.2016 appears to be genuine and **bona fide**. To this extent, in our considered view, the reasons given by the AO to reject explanation of the assessee for source for cash deposits into bank account is devoid of merits.

10. Having said so, let us come back to the explanation of the assessee with regard to source for remaining cash deposits. The assessee claims that he is into manufacturing of various kinds of dhalls and sells to unregistered dealers in cash. The assessee claims that he has collected cash in demonetized currency from customers even after 09.11.2016 and said cash receipts is not violation of Specified Bank Notes (Cessation of Liabilities) Act, 2017. We find that although, the Government of India & RBI issued various notifications and circulars barring people transacting in SBNs, but, as per Specified Bank Notes (Cessation of Liabilities) Act, 2017, no person shall accept or transact any SBNs from the appointed date. As per said Act, appointed date is 31.12.2016. From the above, it is very clear that up to appointed date, persons can transact in SBNs. However, the only requirement is, they should be able to establish source for said cash deposits. This principle is further fortified by the decision of the ITAT Chennai Bench in the case of *Amar Sparklers Factory v. ITO* in ITA No.808/Chny/2023 order dated 11.10.2023, where the Tribunal after considering relevant facts has held as under:

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. In so far as addition of Rs. 6,62,783/-, we find that the assessee itself has admitted shortage of source in their cash flow statement filed before the AO. Therefore, from the above, it is undoubtedly clear that the assessee could not explain source for cash deposits to the extent of Rs. 6,62,783/- and thus, we are of the considered view that, there is no error in the reasons given by the CIT(A) to sustain additions made towards cash deposits to the tune of Rs. 6,62,783/-. In so far as addition of Rs. 20,40,000/- towards advance received from group concerns, it was an argument of the appellant that group concerns have paid advance in cash during demonetization period and deposited into IDBI bank account. In this regard, the appellant has filed necessary details including PAN nos. and confirmation letters from the group concerns to prove receipt of trade advance. The Assessing Officer has not disputed these facts, however made additions only on the ground that the assessee should not have accepted cash in specified bank notes after 08.11.2016. We find that this issue is covered in favour of the assessee by the decision of ITAT, Chennai Benches in the case of *M/s. Micky Fireworks Industries vs ACIT* in ITA No. 264/Chny/2023, dated 26.07.2023, where the Tribunal under identical set of facts deleted additions made by the Assessing Officer, and the findings of the Tribunal is reproduced as under:

“4. From the facts, the undisputed position that emerges is that the assessee has made sale of fireworks during festival season. The sales are duly accounted for by the assessee in the books of accounts. The accounts have duly been audited. The assessee has realized debtors out of such sale in SBN which have been deposited in the bank account of the assessee. The cash deposited by the assessee has duly been accounted for in the books of accounts. The Ld. AO has not alleged any bogus sales or back dated sales made by the assessee. No defect has been pointed in the books of accounts as maintained by the assessee.

5. It could also be seen that during the course of assessment proceedings, various notices were issued u/s 142(1) from time to time calling numerous details from the assessee. The assessee was required to file numerous details including monthly cash flow statement, inventory of closing stock, copy of sales tax assessment order, monthly cash deposits and credits for various periods, ledger account for purchase and other expenditure, monthly sales gross receipts, monthly purchases, details of old notes and new notes deposited during demonetization period, the day book, Cash book, ledger maintained for business, cash balance as per cash book etc. All these details were duly submitted by assessee vide reply dated 12-12-2019. The assessee also submitted month-wise cash deposits in all bank accounts, details of old notes deposited at the time of demonetization period. Pertinently, the assessee also furnished details of name, address and PAN of cash depositors who deposited cash during demonetization period. The same has been detailed on pages 24 to 35 of the paper book. Apparently, the same could not be faulted with by Ld. AO. There is no allegation of any irregularity in the books of accounts.

6. We find that the only reasoning to treat the said deposits as unexplained cash credit u/s 68 is that the assessee was debarred from dealing in SBN after 08-11-2016. However, in the present case, the cash so received by the assessee is backed by sales carried out by the assessee as recorded in the books of accounts. Therefore, the source of cash is duly explained. The provisions of Sec.68 could be invoked only in cases when there was unexplained cash credit in the books of accounts maintained by the assessee. However, the assessee has duly identified the debtors from whom the cash was received and the same could not be disputed by lower authorities. The PAN of respective debtors as well as quantum of cash realized from each of them has duly been detailed by the assessee before Ld. AO during assessment proceedings. No defect has been pointed out in the books of accounts. In such a case, the credit could not be held to be unexplained cash credit and the impugned additions are not sustainable in law.

7. The SMC bench of this Tribunal in Mrs. Umamaheswari Vs. ITO (supra), on identical facts, deleted similar additions on the ground that the assessee had duly evidenced the source of cash deposit and therefore, addition could not be made u/s 68. Similar is another decision of SMC Raipur Bench in Rahul Cold Storage

Vs. ITO (supra) wherein it has similarly been held that when the deposits were sourced out of business receipts duly recorded in the books of accounts, no such addition could be made u/s 68. The other cited decision of Bangalore Tribunal is also on similar lines.

8. Considering the facts and circumstances of the case, we find force in assessee's case and therefore, delete the impugned addition as made u/s 68. We order so. The Ld. AO is directed to re-compute the income of the assessee."

8. In this view of the matter and by following the decision of ITAT, Chennai Benches, we direct the AO to delete additions made towards source for cash deposits at Rs. 20,40,000/- u/s. 69A of the Act.

11. *In the given facts of the present case, there is no dispute with regard to the fact that the assessee's sales predominantly in cash. It is also an undisputed fact that there is no abnormal variation in total sales, cash sales and cash deposits for two Financial Years. The assessee is also able to file various evidences, including month-wise purchase and sales and cash book to prove availability of cash in hand as on 08.11.2016. Therefore, we are of the considered view that going by the nature of business of the assessee and also details submitted for two Financial Years, the explanation offered by the assessee towards source for cash deposits into bank account during demonetization period, is **bona fide** and acceptable. The AO and the Ld.CIT(A) without considering the relevant submissions of the assessee simply made addition towards cash deposits u/s.69A r.w.s.115BBE of the Act. Thus, we set aside the order of the Ld.CIT(A) and direct the AO to delete the addition made towards cash deposits u/s.69A r.w.s.115BBE of the Act."*

14. In the given facts and circumstances of the present case, the cash deposit in SBN made by the assessee was only Rs.32,00,000/- during the demonetisation period and the source for the same is explained as received from the business transactions. Therefore, we are of the considered view that the AO and Id.CIT(A) without considering the relevant submissions of the assessee made an addition of cash deposits as unexplained money U/s.68 of the Act r.w.s.115BBE of the Act. Thus, by considering the facts of the case and respectfully following the precedents laid down by the Tribunal, we find merit in the

contentions of the assessee. Accordingly, the order of the learned CIT(A) is set aside, and the AO is directed to delete the addition made under Section 68 read with Section 115BBE of the Act. Consequently, the grounds raised by the assessee in this regard are allowed.

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

Order pronounced in the open court on 28th April, 2025 at Chennai.

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)
न्यायिक सदस्य/Judicial Member

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 28th April, 2025

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF