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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.652/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. Kisan, Nizamabad. PAN:AAQFK5985J	Vs.	Asst. Commissioner of Income Tax, Circle-1, Nizamabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri A. Srinivas, C.A.	
राजस्व द्वारा / Revenue by:	Shri Srinath Sadanala, SR-DR	
सुनवाई की तारीख / Date of hearing:	29/04/2025	
घोषणा की तारीख / Pronouncement:	19/05/2025	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M. :

This appeal is filed by M/s. Kisan ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), dated 16.10.2023 for the A.Y. 2017-18.

2. At the outset, it is seen that, there is a delay of 12 days in filing of this appeal for which the assessee has filed a condonation petition along with affidavit explaining the reasons for such delay. After considering the contents of the condonation petition and after hearing the Learned

Department Representative (“Ld. DR”), the delay of 12 days in filing of this appeal is condoned and the appeal is admitted for adjudication.

3. The assessee has raised the following grounds of appeal :

1. The order of the Appellate Commissioner is contrary to law, facts and circumstances of the case.
2. The Appellate Commissioner ought not to have confirmed the disallowance of Depreciation of Rs.9,21,953/-, as claimed by the Appellant.
3. The Appellate Commissioner ought not to have confirmed the addition of Rs.80,01,400/- made under section 69 of the Act.
4. The Appellate Commissioner ought not to have confirmed the addition on account of disallowance of Rs.73,030/- under section 40(a)(ia).
5. The Appellate Commissioner erred in not considering the submission of the appellant that, the AO having disallowed the expenditure on purchase of computers and laptops as a capital expenditure debited to revenue, should have allowed depreciation on the same.
6. Any other grounds which the Assessee may urge either before or at the time of the hearing.

4. The brief facts of the case are that, the assessee is a partnership firm engaged in the business of textiles, filed its Return of Income (“ROI”) for A.Y. 2017-18 on 06.11.2017 declaring total income of Rs.35,02,000/-. The assessee was constituted as a new partnership firm w.e.f. 01.06.2016 comprising of 8 partners. Prior to this, all these 8 partners were also partners in 4 different partnership firms (“old firms”) in different combination, the details of which are placed at note nos.3 & 4 at page nos.6

& 7 of the order of Learned Assessing Officer ("Ld. AO") which is to the following effect :

"3. These 8 partners were carrying on business in 4 different firms having among themselves common partners and all the eight partners belong to the same family.

4. The details of the firms are as under

SL.No	Name of the Firm	Partners
1	Kisan Cloth Emporium	1. Dhanpal Suryanarayana 2 Smt. D Manimala 3 D Uday Kumar 4 D Pranay Kumar 5 D Vinay Kumar
2	Kisan Fashion Core	1. Dhanpal Suryanarayana 2 Smt. D Manimala 3 D Uday Kumar 4. D Pranay Kumar 5. Smt D Anjali 6. Smt D Anitha
3	Akruti Annexe	1. Dhanpal Suryanarayana 2. Smt. D Manimala 3. D Pranay Kumar 4 Smt D Anjali 5 Smt D Anitha
4	Akruti	1 Dhanpal Suryanarayana

		<p>2. Smt. D Manimala</p> <p>3. D Uday Kumar</p> <p>4. Smt D Anjali</p> <p>5 Smt D Anitha</p>
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4.1 In order to have better business efficiency, old firms were closed on 31.05.2016 and the assessee firm was constituted w.e.f. 01.06.2016. On closure of the old firm, the assets and liabilities of the erstwhile firms were taken over by the assessee firm. The case of the assessee was selected for scrutiny and notice u/s.143(2) of the Income Tax Act, 1961 ("the Act") was issued on 28.08.2018. After considering the submissions of the assessee, the Ld. AO completed the assessment u/s.143(3) on 30.12.2019 by making addition of Rs.1,09,32,958/- in the hands of the assessee. On appeal to Ld. CIT(A), the Ld. CIT(A) partly allowed the appeal of the assessee.

5. Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before us. At the outset, the Learned Authorised Representative ("Ld. AR") submitted that, the ground nos.1 & 6 are general in nature and the assessee is not pressing ground nos. 4 & 5. Therefore, ground nos.1 & 4 to 6 are not required to be adjudicated separately. Accordingly, ground nos.1 & 4 to 6 are dismissed, being not pressed.

6. Ground no.2 of the assessee is related to disallowance of depreciation of Rs.9,21,953/-. The Ld. AR submitted that, on closure of old firms, the assets and liabilities of the erstwhile firms were taken over by the assessee firm. Among the assets transferred, the buildings which were originally constructed by two of the old firms viz. M/s. Kisan Cloth Emporium and M/s. Aakruti were also transferred to the assessee. During the relevant A.Y., the assessee claimed depreciation of Rs.9,21,953/- on the said building u/s.32(1) of the Act. However, the Ld. AO disallowed the claim of depreciation on the ground that the assessee was not the owner of the building as the transfer of the building was not made through a registered sale deed. Therefore, the assessee cannot be treated as owner of the building for the purpose of section 32 of the Act. The observation of the Ld. AO with regard to such disallowances are placed at note nos.6.2 and 6.3 of page nos.8, 9 & 10 of the order of Ld. AO, which is to the following effect :

6.2. The submission of the assessee is not acceptable for the following reasons:

1. As claimed by the assessee these buildings are not constructed by the assessee M/s. Kisan and also these buildings have not been constructed from the funds of the assessee firm M/s. Kisan. These buildings were constructed by the firms M/s. Kisan Cloth Emporium and M/s. Aakruthi only.
1. The assessee transferred these buildings from M/s. Kisan Cloth Emporium and M/s. Aakruthi only by way of transfer entry and not through registered documents. A Building is a structure, which cannot be transferred by a mere entry as in case of a movable asset. The building constructed by the earlier

firms belongs to them. As the property in question is an immovable property, the title in the said property could not pass unless it was executed on a proper stamp paper and was duly registered with the Sub-Registrar. In the absence of transfer of title, it could not be said that the assessee M/s. Kisan had become the owner of the building. Reliance is placed on the Hon'ble Supreme Court of India's judgment in Civil Appeal No. 3360 of 2006 between M/s. Mother Hospital Pvt. Ltd. and Commissioner of Income-Tax, Trichur. The relevant portion of the order is as under:

"Building which was constructed by the firm belonged to the firm. Admittedly it is an immovable property. The title in the said immovable property cannot pass when its value is more than Rs. 100/- unless it is executed on a proper stamp paper and is also duly registered with the sub-Registrar. Nothing of the sort took place. In the absence thereof, it could not be said that the assessee had become the owner of the property."

1. The Hon'ble Supreme Court of India in the same judgment also had discussion on explanation (1) to Section 32 of the Income Tax Act, 1961 as held as under:

"This explanation reads as under: "32

(1)

.....

Explanation 1. Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work in or in relation to and by way of renovation or extension of or improvement to the building, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee."

As is clear from the plain language of the aforesaid explanation, it is only when the assessee holds a lease right or other right of occupancy and any capital expenditure is incurred by the assessee on the construction of any structure or doing of any work in or in relation to and by way of renovation or extension of or improvement to the building and the

expenditure on construction is incurred by the assessee. that assessee would be entitled to depreciation to the extent of any such expenditure incurred'

1. In the instant case, assessee's submissions show that the buildings were constructed by the firms M/s. Kisan Cloth Emporium and M/s. Aakruthi and the construction was not carried out by the assessee M/s. Kisan himself. Therefore, the explanation also would not come to the aid of the assessee.

6.3. As per the above discussion in para 6.2, the ownership of these assets is not with the assessee M/s. Kisan and the depreciation claimed of Rs. 9,21,953 on these properties is not admissible under section 32 of Income tax Act, 1961. Accordingly, Rs. 9,21,953 are disallowed u/s. 32 of Income Tax Act, 1961 and added to income of the assessee. Penalty proceedings u/s. 270A are initiated for misreporting of income.

[Addition: Rs. 9,21,953]

7. Aggrieved with the order of Ld. AO, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) affirmed the disallowance made by the Ld. AO following the same reasons.

8. Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before Tribunal. Before us, the Ld. AR submitted that, the old erstwhile firms were closed and all their assets and liabilities were taken over by the assessee w.e.f. 01.06.2016. The assessee had continued the same business activity and had taken over all the business assets including the building in question. Although there was no registered sale deed, physical possession, control and uses of the building were with the assessee. It was also submitted that, for the purpose of section 32 of the Act, the assessee need

not be a legal owner, but must be the beneficial owner i.e. the person who exercised the control over the assets and uses the assets in the course of business. In support of their argument, the Ld. AR relied on the decision of Hon'ble Supreme Court in the case of Mysore Mineral Limited Vs. CIT (1999) 239 ITR 775 (SC) and submitted that, the Hon'ble Supreme Court has held that, the intention of the legislature in enacting the section 32 would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. The Ld. AR also relied on the decision of Hon'ble Supreme Court in the case of Dalmia Cement (Bharat) Ltd. Vs. CIT (2001) 247 ITR 267 (SC) and submitted that, the Hon'ble Court relying on the decision of Mysore Mineral Limited Vs. CIT (supra), held that any one in possession of property in his own title exercising such dominion over property as would enable others being excluded therefrom and having right to use the property and enjoy its usufruct in his own right would be owner of buildings though formal deed of title may not have been executed and registered, he could claim depreciation in respect of such property. Accordingly, the Ld. AR submitted that, even if the building has not been got registered in the name of the assessee, for all purposes, the assessee is owner of the building and is eligible for depreciation u/s.32 of the Act.

9. Per contra, the Ld. DR relying on the order of the revenue authorities argued that, the registered ownership document was absent in this case. He further submitted that, in absence of a registered sale deed, the assessee cannot be treated as the legal owner and thus depreciation is not allowable to the assessee. Accordingly, the Ld. DR submitted that, there is no infirmity in the order of revenue authorities.

10. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. There is no dispute about the fact that all the old firms closed their business on 31.05.2016. It is also not disputed that the assessee was constituted w.e.f. 01.06.2016 and taken over all the assets and liabilities of the old firms. It is also a fact that the building in question, were being used by the assessee for the purpose of its business. The only dispute before us is that, whether the assessee can be treated as owner of the building for the purpose of claiming depreciation u/s.32(1) of the Act in absence of a registered document of transfer. We have gone through the decision of Hon'ble Supreme Court in the case of Mysore Mineral Limited Vs. CIT (supra), wherein at para no.14, the Hon'ble Supreme Court has held as under :

14. In our opinion, the term owned as occurring in Section 32(1) of the Income Tax Act, 1961 must be assigned a wider meaning. Anyone in possession of property in his own title exercising such dominion over the property as would enable others being excluded therefrom and having the right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the buildings though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act etc. "Building owned by the assessee" — the expression as occurring in Section 32(1) of the Income Tax Act means the person who having acquired possession over the building in his own right uses the same for the purposes of the business or profession though a legal title has not been conveyed to him consistently with the requirements of laws such as the Transfer of Property Act and the Registration Act etc. but nevertheless is entitled to hold the property to the exclusion of all others.

10.1 On perusal of above, we found that, the Hon'ble Supreme Court has held that, the intention of the legislature in enacting section 32 would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not subserve the legislative intent. We have also gone through the decision of Hon'ble Supreme Court in the case of Dalmia Cement (Bharat) Ltd. Vs. CIT (supra) and found that the Hon'ble Supreme Court in this case has followed it's decision of Mysore Minerals Ltd. Vs. CIT (supra). Hence once again, the Hon'ble Court has confirmed that, any one in possession of property in his own title exercising such dominion over property as would enable others being excluded therefrom and having right to use the property and enjoy its usufruct in his own right would be owner of buildings, though formal deed of title may not have been executed and registered, he could claim depreciation in respect of such property.

10.2 On perusal of both the decisions of Hon'ble Supreme Court (supra), we are of the opinion that, for the purpose of section 32 of the Act, the term 'ownership' must be assigned a wider meaning. A person, who, is in possession of property and uses the assets for his business can be regarded as owner for claiming depreciation. Further, the word 'owner' should not necessarily be confined to title ownership, but the beneficial ownership and possession are sufficient. Thus, beneficial ownership of property used for business is sufficient for claiming depreciation.

10.3 In the present case, the assessee has taken over the building, has exercised possession, control, dominion and uses the building for the purpose of business. Therefore, in our opinion, the substantial conditions for claiming depreciation have been satisfied by the assessee. Further, the mere absence of registered sale deed under these peculiar facts, cannot defeat the claim for depreciation. Therefore, we find merits in the contention of the Ld. AR and delete the disallowance of depreciation of Rs.9,21,953/-. Accordingly, the ground no.2 of the assessee is allowed.

11. Ground no.3 of the assessee is related to addition of Rs.80,01,400/- u/s.69 of the Act. In this regard, the Ld. AR submitted that, during the demonetisation period i.e. from 10.11.2016 to 30.12.2016, the assessee had deposited cash of Rs.1,71,16,000/- into its bank account, in Specified Bank

Notes (“SBNs”) of Rs.500/- and Rs.1000/- denomination, which had been declared invalid as legal tender by the Notification of the Government of India w.e.f. 09.11.2016. During the assessment proceedings, the Ld. AO called explanation regarding source of deposits of cash of Rs.1,71,16,000/- in SBNs. In their submission, the assessee submitted that, they had closing cash balance of Rs.91,14,650/- as on 08.11.2016 and the balance amount of Rs.80,01,350/- rounded off to Rs.80,01,400/-, were sourced from cash sales made during the demonetisation period in SBNs. The Ld. AO only accepted the closing cash balance of Rs.91,14,650/- as on 08.11.2016 as explained source and did not accept the explanation given by the assessee with regard to deposit of Rs.80,01,350/- out of cash sales during demonetisation in SBNs. Accordingly, the Ld. AO made the addition of Rs.80,01,400/- in the hands of the assessee as unexplained income u/s.69 of the Act. The observation of the Ld. AO with regard to the addition so made are placed at para nos.7 to 7.5 of the order of Ld. AO which is to the following effect :

7. It is also noticed that the assessee was having cash balance of Rs. 91,14,650 as on 08.11.2016. It is also noticed from the assessee's submission that the assessee made cash deposits to the tune of Rs. 1,71,16,000 in old demonetized Rs. 500 and Rs. 1000 notes during the period 10-11-2016 to 30-12-2016. Considering the closing cash balance of Rs. 91,14,650 as on 08-11-2016, the assessee deposited excess demonetized currency of Rs. 80,01,350 rounded to Rs. 80,01,400 (Difference of 1,71,16,000 and 91,14,650) during the demonetization period. If no proper explanation was furnished, vide this office show cause notice dated 20.12.2019 it was proposed that Rs. 80,01,400 will be considered as unexplained.

7.1. The assessee vide the e-submission dated 24.12.2019, submitted the following:

"In this regard we submit that our firm had a cash balance of Rs 9114650, the banks accepted cash from 10-11-2016 as explained in our earlier submission regarding deposit of demonetised notes, we had to run our business and continue trading activity and we cannot stop sales as our customers are general public who could not get cash as new currency was not yet released and all the ATMs were short of cash, we had no other option but to continue sales and accept the demonetised currency we made every effort to guide the people to utilize swipe facility still the customers from various parts of Nizamabad district had started

demanding to accept the currency. in fear of loosing customers we had considered their request and continued sale of sarees, and readymade garments, as we cannot keep huge balances of cash we have deposited in bank till 31-12-2016, we submit that they are nothing but sales and included in our sale receipts, and we have issued sale bills, and we have not accepted cash from any other person except sales. Hence we request you to consider the situation and accept our explanation."

On this issue the assessee vide the e-submission dated 26.12.2019, also submitted the following:

"Difference in cash balance deposited during 08112016 to 31122016 in this regard we submit that we have not received any other amount except sales during the demonetisation period we are submitting a comparative sales for the past two assessment year of our closed firms whose business is same. The total turnover of four firms for the assessment year is rs489583328 and the turnover for the assessment year 2016-17 is Rs 582609937 and the turnover of kisan for 10 months period is 524095418 even if the part turnover of two months of old firms which is at Rs 101537601 the turnover comes to 625633019 as there is no substantial increase in the turnover in fact there is fall in the turnover hence we once again bring it to your kind consideration that the cash deposited is nothing but sales, we also bring it to your consideration a recent judgement of Delhi Income tax Appellate tribunal judgement in the case of AGSON GLOBAL PRIVATE LIMITED WHERE IN IT IS PASSED ORDERS deleting the done on account of cash deposits done during demonetization period and primary grounds for deletion were parameters outlined by CBDT in its instructions issued on operation clean money Tribunal observed that there was no substantial increase in the sales post demonetisation period compared to earlier years even though the ruling is given by Delhi ITAT at the point similar to the case and also observing the parameters given by CBDT our submissions are genuine and can be accepted. WE ARE ENCLOSING XL STATEMENT IN PROOF OF COMPARATIVE SALES OF EARLIER YEARS"

7.2. The assessee has stated that he has received demonetized currency out of sales and utilized the same for making cash deposits during the demonetization period. The same cannot be acceptable for the following reasons:

(i) The assessee cannot accept the demonetized currency i.e. Specified Bank Notes of Rs. 1000 & Rs. 500 denomination from 09-11-2016 onwards, as the same were not a legal tender with certain exemptions as notified in the Gazette Notification of Ministry of Finance in No. 2653 dated

8th November, 2016. In this notification, it has been clearly notified that the Central Government declared that the bank notes of existing series of denomination of the value of five hundred rupees and one thousand rupees (hereinafter referred to as the specified bank notes), shall cease to be legal tender on and from the 9th November, 2016.

(ii) In this connection, Sec. 17, Sec. 22 and Sec. 26 of Reserve Bank of India Act, 1934, are very relevant. Section 17 of RBI Act says that making and issue of bank notes shall be one of the business of Reserve Bank of India. As per section 22 of RBI Act, RBI shall have the sole right to issue bank notes. Section 26 says that subject to sub-section (2) of Sec. 26, every bank note shall be a legal tender in any place in India in payment for the amount expressed therein and it shall be guaranteed by the Central Government. While sub-section (2) says that Central Government on the recommendation of Central Board (it is board of RBI directors) by notification in Gazette of India may declare any series of bank notes will cease to be legal tender from the date as notified in Gazette and term as specified in the notification.

(iii) On 8th November, 2016, the Central Government, through Gazette Notification 2652 dated 8th November, 2016, declared that from 9th November, 2016, Rs. 500 and Rs. 1000 (Specified Bank Notes) ceased to be legal tender and it was subject to certain conditions laid down in several notifications issued with it and later on (Like these notes were allowed for payment in emergency services like hospital, petrol pumps, rail reservation etc.) and public was asked to get limited notes exchanged from Banks and was asked to deposit all demonetized notes to their bank accounts. In this regard, various queries have been raised by the public with regard to the demonetization of old SBNs of Rs. 1000 & Rs. 500 and the same were answered through FAQs by the RBI. Question no 2 of the FAQ and relevant answer issued by the RBI is reproduced here below:

"2. What is this scheme?"

Ans. The legal tender character of the bank notes in denominations of Rs. 500 and Rs. 1000 issued by the Reserve Bank of India till November 8, 2016 (hereinafter referred to as Specified Bank Notes)

stands withdrawn. In consequence thereof these Bank Notes cannot be used for transacting business and/or store of value for future usage "

(iv) Thus, it is very clear that once it was declared in Gazette by the RBI that Specified Bank Notes ceased to be legal tender, no person is allowed to use such SBN notes for transacting normal business activities or allowed to store for future usage.

(v) That being the case, question arises as to whether any person who received such SBN notes after 9th November, 2016, can bring it into his books of accounts. Here, the basic principles of accountancy have to be relied upon. The money measurement concept underlines the fact that in accounting and economics generally, every recorded event or transaction is measured in terms of money, i.e., the local currency monetary unit of measure. Since the SBNs were just a pieces of papers and they bear no value on 9th November or after, as Central Government, the guarantor, had withdrawn its guarantee. Therefore, it cannot be measured in money terms and hence, it cannot be journalized in books of account. Therefore the transactions made in SBN on or after 9th November, 2016 cannot be entered into cash books.

(vi) Now, it is to be examined whether any provisions of Income Tax Act, 1961 is to be applied in circumstances, where the assessee has received SBN notes after 09-11-2016 for any monetary transactions and brings the same into his books of accounts. It is to be noted that from 09-11-2016, only legal tender currencies like Rs. 5, Rs. 10, Rs. 20, Rs. 50, Rs. 100, Rs. 200, Rs. 500 and Rs. 2000 only can be accepted by the assessee for any monetary transactions. Therefore, if the assessee has received any SBN notes after 09-11-2016 on account of any monetary transactions and utilizes the same for making cash deposits into the bank account, then, the credit of the same into the books of accounts is not valid. Therefore, the same has to be treated as unexplained investments u/s 69/69A and brought to tax.

(vii) The assessee's case does not come under the exempted category as notified by the RBI and therefore, the assessee is not allowed to receive

the old SBN notes for doing the monetary transactions and enter the same into his books of account. In view of the discussions as above, the monetary transactions done by the assessee in the SBN notes after 09-11-2016 are not valid and therefore, the same is to be treated as unexplained investments.

7.3. Since, the transactions in demonetized currency in the case of assessee for the period 09-11-2016 to 30-12-2016 are not valid, the same cannot be considered as sales and no comparison with previous year figures arises. As the sales are in itself not valid, the order of Hon'ble ITAT, Delhi is not applicable in this case.

7.4. As enumerated in the decision of the Hon'ble Supreme Court in the case of Roshan Di Hatti Vs CIT (1977) 107 ITR 938 (SC), Kale Khan Mohammed Hanif Vs CIT (1963) 50 ITR 1 (SC), it has been held in various judicial pronouncement that where the nature and source of any receipt/investment, whether it be a money or other property, cannot be satisfactorily explained by the assessee, it is open for the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source. In the case of the assessee, the assessee could not explain the sources for the cash deposits of Rs. 80,01,400 made in demonetized currency during the period 10-11-2016 to 30-12-2016.

7.5. In view of the above discussed, the sources for the cash deposits of Rs. 80,01,400 made in demonetized currency during the period 10-11-2016 to 30-12-2016 could not be explained by the assessee and the same are added u/s. 69 of Income Tax Act, 1961. Penalty proceedings u/s. 271AAC(1) are initiated for the addition being made u/s. 69 of Income Tax Act, 1961.

[Addition: Rs. 80,01,400]

12. Aggrieved with the order of Ld. CIT(A), the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee upholding the reason given by the Ld. AO.

13. Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before the Tribunal. The Ld. AR submitted before us that, the assessee had collected the SBNs during demonetisation period which were properly recorded by the assessee in their cash book. Further, the cash sales made during the period were supported by proper sales bills and the assessee had included the sales in its VAT return and paid the appropriate amount of VAT. No discrepancy in its VAT return has been pointed out by the sales tax department. The Ld. AO also did not find any discrepancy in the cash book, sales invoices or the books of account of the assessee. The Ld. AR further submitted that, the Ld. AO merely relied on the facts that receipt of SBNs was prohibited after 08.11.2016, but did not dispute the genuineness of the sales transactions recorded by the assessee. It was further submitted that, even if acceptance of old currency note was restricted by RBI Circular,

Income Tax treatment should be based on actual receipt and not on the legality of the transaction. In support of their argument, the Ld. AR invited our attention to para no.11 of the order of the co-ordinate bench of the Tribunal in the case of ITO Vs. Surabii Gold in ITA no.372/Chny/2023 for A.Y. 2017-18 dated 05.04.2024 and submitted that, in the said case, the Tribunal has held that merely for the reason that there is a violation of certain notification / G.O. issued by the Government in transacting with SBNs, the genuine explanation offered by the assessee towards source of cash deposit cannot be denied unless the Ld. AO makes a case that the assessee has deposited cash into bank in SBNs out of unexplained source. Finally, the Ld. AR submitted before the bench to delete the addition made by the Ld. AO.

14. Per contra, the Ld. DR relied heavily on the orders of revenue authority and submitted that, after 08.11.2016, the acceptance of SBNs was prohibited by the government. Therefore, the explanation offered by the assessee regarding cash sales in SBNs was not acceptable. Consequently, the cash deposited in excess of cash balance as on 08.11.2016 should be treated as unexplained income u/s.69 of the Act. Finally, the Ld. DR submitted that, there is no infirmity in the order passed by the revenue authority and prayed before the bench to dismiss the contention of the assessee on this issue.

15. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. In the present case before us, the assessee has made cash sales during the demonetization period in SBNs and deposited the same in its bank account. The Ld. AO has added the cash deposit of Rs.80,01,400/- u/s. 69 of the Act treating the cash deposit as unexplained on the ground that acceptance of SBNs post 08.11.2016 was prohibited by the government. We found that under similar circumstances, the co-ordinate bench of Tribunal in the case of ITO Vs. Surabii Gold (supra) at para no.11 of its order has held as under :

“ 11. Having said so, let us come back whether is there any prohibition in accepting demonetized currency notes of Rs. 500 and Rs. 1000 after 08.11.2016 and up to 31.12.2016. The Assessing Officer is mainly on the issue of notification issued by the RBI to deal with the specified bank notes and argued that the assessee is not one of the eligible person to accept or to deal with specified bank notes and thus, even if assessee furnish necessary evidence, the assessee cannot accept specified bank notes after demonetization and the explanation offered by the assessee cannot be accepted. No doubt specified bank notes of Rs. 500 & Rs. 1000 has been withdrawn from circulation from 09th November, 2016 onwards. The Government of India and RBI has issued various notifications and SOP to deal with specified bank notes. Further, the RBI allowed certain category of persons to accept and to deal with specified bank notes up to 31st December, 2016. Further, the specified bank notes (cessation of liability) Act, 2017, also stated that from the appointed date no person can receive or accept and transact specified bank notes, and appointed date has been stated as 31st December, 2016. Therefore, there is no clarity on how to deal with demonetized currency from the date of demonetization and up to 31st December, 2016. Therefore, under those circumstances, some persons continued to accept and transact the specified bank notes and deposited into bank accounts. Therefore, merely for the reason that there is a violation of certain notifications/GO issued by the Government in transacting with specified bank notes, the genuine explanation offered by the assessee towards source for cash deposit cannot be rejected, unless the Assessing Officer makes

out a case that the assessee has deposited unaccounted cash into bank account in specified bank notes.”

15.1 On perusal of above, we found that the Tribunal has held that merely for the reason that there is a violation of certain notification/G.O. issued by the government in transacting with SBNs, the genuine explanation offered by the assessee towards source of cash deposit cannot be rejected, unless the Ld. AO made out the case that the assessee has deposited unaccounted cash into bank account in SBNs. We also found from the order of Ld. AO that, the source of deposit of cash has been explained by the assessee from cash sales and has been recorded in the books of account of the assessee. Neither the books of account has been rejected by the Ld. AO nor any deficiency in the books of account has been pointed out by the Ld. AO. Further, no deficiency with regard to sales invoices produced by the assessee in support of cash sales has been found by the Ld. AO. The Ld. AO also did not point out any abnormal variation in the turnover of the assessee and pattern of cash deposit by the assessee in its bank account during demonetization period as compared to other periods during the year as well as other years. There is no dispute about the facts that no discrepancy qua source of cash deposit except receipt of cash in SBNs has been pointed out before us. Therefore, relying on the decision of the co-ordinate bench of Tribunal in the case of ITO Vs. Surabii Gold (supra), we hold that, the mere fact that accepting SBNs post

08.11.2016 might have violated RBI guidelines, cannot ipso facto lead to addition u/s.69 of the Act. Therefore, under the present facts and circumstances of the case, we are of the opinion that there was no justification on the part of Ld. AO in denying the explanation given by the assessee and make addition u/s.69 of the Act. Accordingly, the addition of Rs.80,01,400/- made by the Ld. AO is hereby directed to be deleted.

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

Order pronounced in the open Court on 19th May, 2025.

Sd/-
(VIJAY PAL RAO)
VICE PRESIDENT

Sd/-
(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: .05.2025.

* Reddy gp

Copy of the Order forwarded to :

1.	M/s. Kisan, 7-2-60/4, 60/5, Marwadigally, Nizamabad-503001
2.	ACIT, Circle 1, Nizamabad.
3.	Pr.CIT, Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,