

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE JUSTICE (RETD.) C V BHADANG, PRESIDENT &
MS PADMAVATHY S, AM**

**I.T.A. No. 4553/Mum/2025
(Assessment Year: 2017-18)**

Girish Karamshi Dedhia, Ground Floor, Auto Pushp, Mulund Goregaon Link Road, Mulund West, Mumbai-400080. PAN: ADLPD6928J	Vs.	DCIT, Circle-15(1), Room No. 470, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)		
: Respondent)		

Assessee / Appellant by : Shri Bhadresh Doshi, AR
Revenue / Respondent by : Shri Swapnil Choudhary, CIT-DR
Date of Hearing : 16.09.2025
Date of Pronouncement : 10.10.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [In short 'CIT(A)'] passed under section 250 of the Income Tax Act, 1961 (the Act) dated 31.05.2025 for Assessment Years (AY) 2017-18.

2. The assessee is an individual and is running a Petrol Pump as Proprietorship concern under the name of M/s. Autopushp. The assessee filed the return of income for AY 2017-18 on 06.11.2017 declaring total loss of Rs. 5,54,790/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee.

The Assessing Officer (AO) completed the assessment by making various disallowances as under:

(i) Disallowance under section 40(a)(ia)	– Rs. 7,66,500/-
(ii) Disallowance on TDs	– Rs. 68,742/-
(iii) Disallowance of interest on loans	– Rs. 28,46,677/-
(iv) Disallowance of Expenses under section 14A	– Rs. 20,050/-
(v) Addition under section 69A towards cash deposits	–Rs. 1,24,41,000/-
(vi) Disallowance of lease charges	– Rs. 35,00,000/-

3. On further appeal, the CIT(A) gave partial relief to the assessee. Though the assessee has raised various grounds with regard to the additions sustained by the CIT(A) during the course of hearing the Id. AR submitted that the grounds other than Ground No.4 are not pressed. Accordingly, Ground No. 1 to 3, 5 & 6 are dismissed as not pressed. Ground No.4 reads as under:

“4. In the facts and circumstances of the case, Ld. AO has erred in invoking the provisions of section 69A of IT Act, 1961 as none of the conditions for invoking section 69A are satisfied as to:

➤ **Non recording the money (herein) in books of accounts**

Cash has been duly recorded in the books of accounts & tax has also charged on the said income recorded.

AND

➤ **No explanation about the nature & source of acquisition of money (herein)**

The appellant furnished a detailed explanation, duly supported by documentary evidence including sales registers, stock records, VAT returns, and cash books during the course of assessment proceedings.

*None of the conditions for invocation of Section 69A of IT Act, 1961 are satisfied. **Thereby Ld. CIT has erred in invoking provisions of Section 69A IT Act, 1961.***

Without prejudice to the above, in the facts and circumstances of the case, the Learned Assessing Officer erred in making an addition of Rs.

1,24,41,000/- under Section 69A of the Income-tax Act, 1961, in respect of cash sales made during the demonetization period, by placing undue reliance on Notification No. S.O. 3408(E) dated 08.11.2016 issued by the Government of India, without appreciating the specific facts and record of the appellant's case.

The Learned Commissioner of Income-tax (Appeals) further erred in upholding the said addition, despite the fact that the cash deposits were duly recorded in the appellant's regular books of account maintained in respect of his proprietorship concern, 'Auto Pushp', and were attributable to genuine cash sales of petroleum products carried out in the normal course of business during the demonetization period.

Thereby Ld CIT has erred in confirming addition of Rs.1,24,41,000 u/s 69A I.T. Act, 1961.

4. The ld. AR submitted that the AO while treating the cash deposit as unexplained under section 69A did not question the sales, stock declared by the assessee. The ld. AR further submitted that the only reason for AO to make the addition is that the exception for accepting the cash in Specified Bank Notes (SBN) given to the Petrol Pumps is not applicable to the assessee since the assessee does not fall in the category of Petrol Pumps as mentioned in the Notification No. 3408E dated 08.11.2016 issued by the Government of India. The ld. AR submitted that all the details pertaining to the cash sales were submitted before the AO and that the AO did not record any adverse finding in this regard. The ld. AR drew our attention to the cash sales details submitted before the AO and the summary of cashbook (page 52 & 53 of PB). The ld. AR further drew our attention to the VAT returns, the quantitative details, etc. submitted before the AO to substantiate the contention that the source for cash sales which well explained before the AO. The ld. AR also submitted that having accepted the cash sales making an addition under section 68 towards the same would amount to double taxation. The ld. AR relied on the decision of the Ahmadabad Bench of the Tribunal in the case of ITO vs. Ashapura Petrochem Marketing Pvt. Ltd. (ITA No.

511/Ahd/2020 dated 18.10.2023) where an identical issue has been considered by the Tribunal and deleted the addition towards cash deposit.

5. The ld. DR on the other hand submitted that the assessee has received SBN against the Circular issued by the Government of India which is in violation of law and therefore the AO has treated the cash deposit as unexplained. The ld. DR fairly conceded that the AO has not examined the issue of merits based on documents submitted by the assessee and accordingly prayed that the issue may be remitted back for re-examination

6. We heard the parties and perused the material on record. During the course of assessment the AO noticed that the assessee has deposited a sum of Rs. 1,24,41,000/- in SBN into the Bank A/c during the demonization. The AO did not accept the submission of the assessee that the Petrol Pump falls within the category of exception as allowed by the Government of India during demonization period. The relevant findings of the AO in this regard are extracted below:

“9.1 The contention of the assessee is considered, however, the same is found to be not acceptable. The details submitted by assessee including lease deed of petrol pump, details of parties from whom such purchase of petrol/diesel was made, it is seen that the assessee had contracted with Essar Oil for carrying out business of sale of petrol/diesel in the name of proprietorship concern. Further, out of the total purchase of petrol/diesel at Rs. 6,80,83,408/- assessee purchased petrol/diesel worth Rs. 6,80,73,027/- from Essar Oil alone. On such facts it was evident that the business of sale of petrol/diesel at Auto Pushp through the lease agreement with Essar Oil was not in accordance with the notification issued by the Govt. of India allowing acceptance of Specified bank Notes (SBN) only at Petrol Pumps of Public sector Oil Marketing Companies and not other petrol pumps. As per the above findings the assessee was doing business of sale or petrol/diesel under agreement with Essar which is not a Public sector Oil Marketing Company. Therefore the cash sales made by assessee in SBN, later claimed to be deposited in bank, if accepted to be true, was in violation of such Instructions issued by the govt. of India. In this regard reference may be made to the Notification SO 3408(E), dated 8/11/2016, issued

by the Govt. Of India allowing only Petrol Pumps of Public Sector Oil Marketing Companies to accept specified bank notes and in view of this Instruction the cash sales made by the assessee in SBN, as claimed by the assessee and if taken to be true, was in clear violence of this instruction applicable at that point of time.

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THE GAZETTE OF INDIA : EXTRAORDINARY [PART II—SEC. 3(ii)]

(क) पब्लिक सेक्टर तेल विपणन कंपनियों के प्राधिकार के अधीन कार्य कर रहे स्टेशनों से पेट्रोल, डीजल और गैस के क्रय के लिए ;

(ख) शवदाह गृहों और कब्रिस्तानों में संवाय के लिए ;

(ख) अंतर्राष्ट्रीय विमानपत्तनों में, आगमन और प्रस्थान करने वाले ऐसे यात्रियों के लिए, जो ऐसे विनिर्दिष्ट बैंक नोट रखते हैं, जिनका मूल्य षष्ठ मुद्रा विशेषता रखने वाले नोटों के लिए उनका विनियम करने के लिए पांच हजार रुपए से अधिक नहीं है ;

(ग) विदेशी पर्यटकों के लिए, विदेशी मुद्रा या विनिर्दिष्ट बैंक नोट, जिनका मूल्य, षष्ठ मुद्रा की विशेषता रखने वाले नोटों के लिए उनका विनियम करने के लिए पांच हजार रुपए से अधिक नहीं है, का विनियम करने के लिए ।

2. पैरा 1 में निर्दिष्ट सभी स्थापन 9 नवंबर, 2016 और 11 नवंबर, 2016 के बीच की अवधि के दौरान विनिर्दिष्ट बैंक नोटों से किए गए संव्यवहारों के स्टॉक और विक्रय के अभिलेख का पूरा लेखा-जोखा रखेंगे । [फा.सं. 10/03/2016-सीआई. I]
डॉ. सौरभ गर्ग, संयुक्त सचिव

MINISTRY OF FINANCE
(Department of Economic Affairs)
NOTIFICATION
New Delhi, the 8th November, 2016

S.O. 3408(E).—Whereas, by the notification of the Government of India in the Ministry of Finance, vide F. No. 10/3/2016-Cy.I dated 8th November, 2016 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 8th November, 2016, 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;

And whereas, it has become necessary to notify certain exemptions for the convenience of the members of public in carrying out certain emergent and urgent transactions using the specified bank notes;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 26 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby declares that the specified bank notes shall not be ceased to be legal tender, with effect from the 9th November, 2016 until the 11th November, 2016, to the extent of transactions specified below, namely:—

(a) for making payments in Government hospitals for medical treatment and pharmacies in Government hospitals for buying medicines with doctor's prescription;

(b) at railway ticketing counters, ticket counters of Government or Public Sector Undertakings buses and airline ticketing counters at airports for purchase of tickets;

(c) for purchases at consumer cooperative stores operated under authorisation of Central or State Governments;

(d) for purchase at milk booths operating under authorisation of the Central or State Governments;

(e) for purchase of petrol, diesel and gas at the stations operating under the authorisation of Public Sector Oil Marketing Companies;

(f) for payments at crematoria and burial grounds;

In this regard, assessee was issued show cause notice to explain the source of cash in consideration of above mentioned notification. However till date no reply is received from the assessee. Therefore the explanation offered by the assessee earlier is not acceptable and such cash deposited during the demonetization period is held to unexplained. Accordingly, the cash deposited in bank at Rs. 1,24,41,000/-during the demonetization period is held to be the Unexplained Money u/s. 69A of the Act and is added to the total income of the

assessee. Penalty proceedings u/s. 271AAC of the Act are initiated for misreporting of income.”

7. From the perusal of the above findings, it is clear that the AO has made the addition for the reason that the assessee has been receiving SBN in violation of circular issued by the Government and that the assessee has not filed any response to the show cause notice. We notice that the finding with regard to submission of details, is factually incorrect since the assessee has filed various details such as ITR, audited financials, tax audit report, sales register, bank statement, monthly purchase & sales, month-wise cash book summary VAT return, month wise quantitative details of stock along with stock register etc., before the AO vide letters dated 18.12.2018, 01.11.2019, 22.11.2019 and 13.12.2019. However we are unable find anything being recorded by the AO in the assessment order regarding the above details submitted by the assessee or any adverse findings as why these details are not acceptable. We further notice that even the CIT(A) has not given any findings on merits. From the perusal of the month wise details of cash & credit purchases and sales details (page 48 to 50 of paper book) we notice that out of the total sales 80% to 90% is cash sales and that has been the trend for the Financial Year 2014-15 to 2017-18. It is a settled legal position that when the cash sales which is the source for deposit of cash has been accepted, then no addition can be made under section 68 of the Act. In assessee's case as already noticed, the lower authorities have not controverted the submission that cash sales is the source for deposit of cash into the bank and books of accounts have not been rejected. In our considered view, it is not correct on the part of the revenue to treat the cash deposited as unexplained having accepted the cash sales and the books of accounts, only for the reason that receipt of SBN is in violation of circular issued by Government of India. It is relevant to take note of the following observations of

the Ahmedabad Bench of the Tribunal in the case of Ashapura Petrochem Marketing Pvt. Ltd. (supra) where it has been held that –

“7. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. The addition made by the Ld. Assessing Officer of Rs. 1,24,59,500/- u/s. 68 of the Act mainly on the ground that the assessee was not authorized to accept Specified Bank Notes during demonetization period as observed in the assessment order. Thus it is an admitted fact that the cash deposit is on account of sale of petrol, diesel and other petroleum products. These sales have been duly recorded in the books of accounts and appropriate VAT taxes also collected by the assessee. The Manager of the assessee company also filed a Notarized Affidavit dated 29-03-2017 accepting the above facts during the course of assessment proceedings. Thus it is clearly established that the Ld. A.O. on one side accepting the source of cash deposit and on the other side, he is making the cash deposit as unexplained cash credit which is self-contradictory. The Assessing Officer following the Circular dated 08-11-2016, which is not applicable since Para (e) of the Circular deals with the cases of purchase of petrol, diesel etc., and not to sale of petrol, diesel by accepting Specified Bank Notes. Thus the invocation of Section 68 is invalid in law.

7.1 Further the assessee filed complete details of Purchase register, Sales register, Cash Book, Bank statement, Month-wise details of purchase and sales, Copies of VAT returns etc. However the Ld. A.O. is not able to find any defect in the books of accounts, except general statements made in the assessment order. Though the A.O. has doubted the sales made during the year, he is not doubted the purchases made or stock maintained by the assessee during the year. Further the assessee also demonstrated the fluctuations in the sales during the entire period and there is no drastic increase in sales during the period of demonetization. It is further noticed that it is the month of May 2016 sales reported at 84.81 lacs. Similarly, in the month of November 2016 (demonetization period), the sales is reported at 1.04 crores which is not found to be drastic higher figure. Thus the deletion made by the Ld. CIT(A) does not require any interference.

8. The Co-ordinate Bench of this Tribunal in the case of Shree Sanand Textiles Industries Ltd. (cited supra) held as follows:

“...9.6. We also note that the provisions of section 68 cannot be applied in relation to the sales receipt shown by the assessee in its books of accounts. It is because the sales receipt has already been shown in the books of accounts as income at the time of sale only.

9.7. We are also aware of the fact that there is no iota of evidence having any adverse remark on the purchase shown by the assessee in the books of accounts. Once the purchases have been accepted, then the corresponding sales cannot be disturbed without giving any conclusive evidence/finding. In view of the above we are not convinced with the finding of the learned CIT(A) and accordingly we set aside the same with the direction to the AO to delete the addition made by him.”

8.1. The Co-ordinate Bench of the Bangalore Tribunal in the case of M/s. Manasa Medicals (cited supra) held as follows:

“....11. On the other hand, the ld. AR submitted that the assessee is covered by the Category of exempted entities who were permitted to accept SBN during the demonetization period. The ld. AR also submitted that the AO has not rejected the turnover of the assessee, but has treated the same as unexplained only for the reason that the assessee has not produced the prescriptions and the identity of the persons who bought the medicines with regard to the sales made. The ld. AR further submitted that the accounts of the assessee are audited and there is no discrepancy found during the audit. It is also contended by the ld. AR that the assessee has produced all the details with regard to the sales including the ledger accounts, cash book, VAT returns etc. during the course of assessment and the AO did not reject the books of accounts of the assessee. The ld. AR drew our attention to the relevant Notification wherein it is stated that for making payments in all Pharmacies on production of Doctor's prescription and proof of identity, however, there is no mandate given that the Doctor's prescription and identity of persons purchasing the medicines need to be kept for record. The ld. AR also placed reliance on the decision of Vishakapatnam Bench of the Tribunal in the case of Hirapanna Jewellers v. ACIT in ITA No.253/Viz/2020 dated 12.05.2021, where it is held that once the assessee admits the sales as revenue receipts, there is no case for making addition u/s. 68. Therefore, the ld. AR submitted that the CIT(A) has correctly allowed the appeal in favour of the assessee.

12. We have heard the rival submissions and perused the material on record. We notice that the assessee during the course of assessment has produced various details including the books of accounts, VAT returns, details of cash deposits made in the requisite format and other details called for by the AO. In the order of assessment, the AO has brought to tax the impugned addition u/s. 68 by stating that –

"3.7 I have carefully gone through the reply of the assessee. The assessee has made cash deposit during demonetization period of Rs. 2,18,38,160/-. On

verification of the e-filed cash book it is seen that cash balance as on 08/11/2016 is Rs. 6,32,731/-. From this it is clear that the assessee has made cash deposit of Rs. 2,18,38,160/-, out of opening cash balance as on 08/11/2016 of Rs. 6,32,731/- & cash sales from 09/11/2016 to 31/12/2016 of Rs. 2,12,05,429/-.

3.8 As per RBI notification vide no. SO 3416(E) dated 09/11/2016 and subsequent SOS it is clearly mentioned that "For making payments in all Pharmacies on production of doctor's prescription and proof of identity",... However, the assessee in the reply has stated that they are not required by law to keep the copy of the prescription for record; hence, they have not maintained it. From this it is very clear that the assessee firm has violated the RBI guidelines and accepted SBN (old notes) during demonetization by doing cash sales. Further, the assessee firm has not been authorized to accept SBN's for cash sales during demonetization period. Furthermore, the assessee has failed to furnish the details of sales made in SBN's (old notes) & Non-SBN."

3.9 In view of the above, it is concluded that the assessee has violated RBI guidelines and accepted the cash sales during demonetization period. Accordingly, the cash sales made and deposited in bank account during demonetization period is treated as unexplained cash.

3.10 Accordingly, cash sales during demonetization period from 09/11/2016 to the tune of Rs. 2,12,05,429/- (Rs. 2,18,38,160/- (-) Rs. Cash balance as on 08/11/2016 of Rs. 6,32,731/-) is brought to tax under the head Income from other sources as unexplained cash u/s. 68 and tax rates applicable as per provisions of section 115BBE of the Act.

3.11 From the above it is clear that the assessee has made cash deposits in bank accounts out of unexplained cash u/s. 68 and tax rates applicable as per provisions of section 115BBE of the Act. Hence, I am satisfied that this is a fit case for initiation of penal proceedings u/s. 271AAC of the Act."

13. From the above it is clear that the AO is not questioning the source of the cash deposit since he has recorded a finding that cash sales during the demonetization period is brought to tax u/s. 68 which makes it clear that it is admitted fact that sales is the source for cash deposits. The revenue is contending that there is a requirement as per the Circular that the Doctors prescriptions and identity of the persons purchasing medicines needs to be kept in record to substantiate the cash

sales during demonetization period. However, from the plain reading of the said Circular, there is no specific mention as contended by the department. Further, the AO did not reject the books of accounts of the assessee and has not brought anything contrary on record to show that cash sales is not the source for the cash deposited during demonetization period. We are therefore of the opinion that there is no case here for making the addition as unexplained u/s.68. In view of this discussion, we see no reason to interfere with the order of the CIT(A).”

8.2. The Co-ordinate Bench of the Bangalore Tribunal in the case of Sri Bhageeratha Pattina Sahakara Sangha Niyamitha (cites supra) held as follows:

“...15. The case of the A.O is that the assessee has collected the demonetized notes after 8.11.2016 in violation of the notifications issued by RBI. Accordingly, he has taken the view that the above said amounts represents unexplained money of the assessee. I am unable to understand the rationale in the view taken by A.O. I noticed that the AO has invoked the provisions of sec.68 of the Act for making this addition. I also noticed that the assessee has also complied with the requirements of sec.68 of the Act. The AO has also not stated that the assessee has not discharged the responsibility placed on it u/s 68 of the Act. Peculiarly, the AO is taking the view that the assessee was not entitled to collect the demonized notes and accordingly invoked sec.68 of the Act. I am unable to understand as to how the contraventions, if any, of the notification issued by RBI would attract the provisions of sec. 68 of the Income tax Act. In any case, I notice that the assessee has also explained as to why it has collected demonetized notes after the prescribed date of 8.11.2016. The assessee has explained that it has stopped collection after the receipt of notification dated 14.11.2016 issued by RBI, which has clearly clarified that the assessee society should not collect the demonetized notes. Accordingly, I am of the view that the deposit of demonetized notes collected by the assessee from its members would not be hit by the provisions of section 68 of the Act in the facts and circumstances of the case. Accordingly, I set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete this disallowance.”

9. Respectfully following the above judicial precedents, we have no hesitation in confirming the deletion of Rs. 1,24,59,500/- made u/s. 68 of the Act. Thus the grounds raised by the Revenue are devoid of merits, hence, the same are hereby dismissed.”

8. Considering the facts and circumstances of the case and respectfully following the above judicial precedence, we hold that treating the cash deposit

which the assessee has sourced through cash sales as unexplained under section 68 is not sustainable. Accordingly we direct the AO to delete the addition made in this regard.

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

Order pronounced in the open court on 10-10-2025.

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
President

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

Sd/-
(PADMAVATHY S)
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai