

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “C” BENCH, BENGALURU**

Before Shri B.R. Baskaran, Accountant Member

ITA No. 593/Bang/2021
(Assessment Year: 2017-18)

Prathamika Krushi Pattina Sahakari Sangha Niyamitha Itagi Pkpssn Itagi Post, Itagi Ranebennur Taluk Haveri 581115	Vs.	The Income Tax Officer - 5 Shree Towers, Hadai Main Road, Opp. DRR Hospital Davanagere 577002
---	-----	--

PAN – AABAP8450D

Appellant

Respondent

Appellant by:	Shri Rajeev Nulvi, Advocate
Respondent by:	Shri Ganesh R. Ghale Standing Counsel for Revenue

Date of Hearing:	30.05.2022
Date of Pronouncement:	01.06.2022

ORDER

Per: B.R. Baskaran, A.M.

The assessee has filed this appeal challenging the order dated 24-09-2021 passed by Ld CIT(A), National Faceless Appeal Centre, Delhi and it relates to the assessment year 2017-18. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.36,16,262/- u/s 68 of the Act, being the amount collected by the assessee in the form of Specified Bank Notes from its customers by way of deposits during demonetization period. In addition to the above, the assessee has also raised a legal ground questioning the jurisdiction of the assessing officer.

2. The facts relating to the case are stated in brief. The assessee is a primary agricultural credit co-operative society providing credit facilities to its members. The AO noticed that the assessee has deposited a sum of Rs.36,36,000/- in the form of Specified Bank Notes (SBN), i.e.,

demonetized notes of Rs.1000/- and Rs.500/- during the period from 09-11-2016 to 31-12-2016. The assessee explained the sources of these SBN as the deposits made by the members of the assessee society, whose identity is proved. The AO took the view that the assessee was not permitted by RBI to accept demonetized currency during demonetization period. Since the demonetized currencies are not legal tender, the AO did not accept the claim that the sources of deposits made by the assessee into its bank account is out of the currency received from its members. Accordingly, the AO assessed the amount of Rs.36,16,262/- as unexplained cash deposit u/s 68 of the Act. The Id CIT(A) also confirmed the said addition.

3. The Id. A.R submitted that an identical addition made in the hands of Sri Bhageeratha Pattina Sahakara Sangha Niyamitha vs. ITO (ITA No.646/Bang/2021 dated 18-02-2022) on identical circumstances has been deleted by the SMC bench of Bangalore Tribunal.

4. The Ld D.R, on the contrary, submitted that the assessee was barred from collecting the demonetised notes and hence the AO has made the impugned addition.

5. In the rejoinder, the Ld A.R submitted that the provisions of sec. 5 of Specified Bank Notes (Cessation of liability) Act, 2017 specifies that “on and from the appointed day, no person shall knowingly or voluntarily hold, transfer or receive any specified bank note”. He submitted that the appointed day was fixed as 31.12.2016 and the assessee has received the SBN prior to 31.12.2016.

5. I heard the parties and perused the record. I notice that an identical issue has been decided in favour of the assessee in the case of Bhageeratha Pattina Sahakara Sangha Niyamitha (supra) as under:-

“12. The last issue relates to addition made u/s 68 of the Act. The A.O. noticed that the assessee society has deposited “Specified bank

notes” (demonetized notes) in the account maintained by it with CDCC Bank, Hosadurga as detailed below:-

<i>Date of deposit</i>	<i>No. of notes of Rs.1000</i>	<i>No. of old notes of Rs.500</i>	<i>SBN deposit</i>
<i>10.11.16</i>	<i>700</i>	<i>600</i>	<i>10,00,000</i>
<i>11.11.16</i>	<i>463</i>	<i>1150</i>	<i>10,38,000</i>
<i>12.11.16</i>	<i>38</i>	<i>137</i>	<i>1,06,500</i>
<i>13.11.16</i>	<i>138</i>	<i>330</i>	<i>3,03,000</i>
<i>Total</i>	<i>1339</i>	<i>2217</i>	<i>24,47,500</i>

When enquired about the sources for making the above deposits, the assessee submitted that they represent cash received by it from its members towards repayment of loan, Pigmy collection, etc. The A.O. noticed that the Government has announced demonetization on 8.11.2016, whereby then existing Rs.1000/- & Rs.500/- currency notes were declared not to be legal tender. The A.O. took the view that the assessee has collected the above said amount after 8.11.2016, which is not permitted. Accordingly, the A.O. took the view that the above said amount represents unexplained money of the assessee and assessed the same u/s 68 of the Act. The A.O. also charged income tax on the above said deposit as per provisions of section 115BBE of the Act. The Ld. CIT(A) also confirmed the same.

13. The Ld. A.R. submitted that, under the provisions of section 68 of the Act, the assessee’s liability is to explain the nature and sources of the money. He submitted that the assessee has explained the nature as well as sources i.e. the above said deposit was made out of its collections in the ordinary course of carrying on business, i.e., it represented money deposited by its members towards repayment of loans, pigmy deposits, etc. Accordingly, he submitted that the assessee has discharged its responsibility u/s 68 of the Act. Further, the collections and deposits have been duly recorded in the books of account and hence, there is no reason to treat the same as unexplained money of assessee. The Ld. A.R. further submitted that merely because demonetized notes ceased to be legal tender, it does not mean that the amount collected by the assessee from its members would become unexplained money of the assessee. The Ld. A.R. also submitted that the Reserve Bank of India issued a series of notifications with regard to the deposit of demonetized notes from 8.11.2016 onwards. He submitted that the RBI, vide notification dated 14.11.2016, clarified that District Central Co-operative Banks can allow their existing customers to withdraw money from their accounts up to Rs.24,000/- per week. It further clarified that no exchange facility against demonetized notes or deposit of such notes should be entertained by them. In view of the above said notification, the assessee has stopped collecting the demonetized notes from 14.11.2016 onwards. Accordingly, the Ld. A.R. submitted that the

above said deposits were collected by the assessee prior to 14.11.2016 and it cannot be considered as violation of any of the Provisions of the Act. Accordingly, he submitted that the A.O. was not justified in invoking the provisions of section 68 of the Act.

14. I heard Ld. D.R. on this issue and perused the record. I notice that the A.O. has not doubted the submissions of the assessee that the above said amount of Rs.24,47,500/- represents collection of money in the normal course of carrying on of business of the assessee, i.e., it represents money remitted by the members of the assessee society towards repayment of the loan taken by them and also towards pigmy deposits, etc. The Ld A.R submitted that the assessee has duly recorded in its books of account the transactions of collections of money as well as deposits made into bank account. Thus, I notice that the assessee has explained the nature and source of the above said amount of Rs.24,47,500/-, which was in-turn deposited by the assessee society in its bank account and further, all these transactions have been duly recorded in the books of account. Hence, the above said deposits cannot be considered as “unexplained money” in the hands of the assessee.

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.”

6. In the instant case, there is no dispute with regard to the fact that sources for making deposit of Rs.36.36 lakhs by the assessee into its bank

account are the money collected from its members. The AO is also not doubting that all the SBNs have been collected by the assessee from its members. Accordingly, following the above said decision, I hold that the addition made u/s 68 of the Act is not justified. The Ld A.R also submitted that the SBNs have been collected by the assessee prior to the appointed date of 31.12.2016, i.e., only from 31.12.2016, the assessee is precluded from accepting SBNs from its members. In this view of the matter, the reasoning relating to contravention of rules of RBI also fails.

7. Accordingly, I set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned disallowance.

8. Since I have decided the issue urged on merits in favour of the assessee, the legal issue urged by the assessee shall become academic. Hence I do not find it necessary to adjudicate it.

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

Order pronounced in the open Court on 1st June, 2022.

Sd/-
(B.R. Baskaran)
Accountant Member

Bengaluru, Dated: 1st June, 2022

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -NFAC, Delhi
4. The CIT
5. The DR, ITAT, Bengaluru
6. Guard File

By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru

n.p.