IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member

ITA No. 511/Ahd/2020
Assessment Year 2017-18

The I.T.O., Ward-1(1)(3), Ahmedabad (Appellant)	Vs	M/s. Ashapura Petrochem Marketing Pvt. Ltd. 33, Sarthik Complex, Besides Gulmahor Park Mall, Satellite, Ahmedabad PAN: AAFCA4480N (Respondent)

Revenue Represented: Shri Ashok Kumar Suthar, Sr.D.R.
Assessee Represented: Shri Sulabh, A.R.

Date of hearing : 25-07-2023
Date of pronouncement : 18-10-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against the Appellate order dated 21.09.2020 passed by the Commissioner of Income Tax (Appeals)-1, Ahmedabad arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. The brief facts of the case is that the assessee is a Company engaged in the business of Trading in Petroleum Products and dealer of Reliance Industries Ltd. trading of Petrol and Diesel and other related products. For the Assessment Year 2017-18, the assessee filed its Return of Income on 04.11.2017 declaring Nil income. The return was processed u/s. 143(1) and then taken for scrutiny assessment.

2.1. During demonetization period i.e. 09.11.2016 to 31.12.2016, the assessee deposited Specified Bank Notes (SBN) of (Denomination of Rs. 500 & Rs. 1000) in the Co-operative Bank of Rajkot Ltd. of Rs. 1,24,59,500/-. The Assessing Officer issued notice u/s. 133(6) to the Co-operative Bank of Rajkot Ltd. and collected the cash deposits in SBN details during the demonetization period. Manager of the assessee company was summoned and in his Affidavit stating that the cash deposit as SNB to the tune of Rs. 1.24 crores was against cash sales made during the period. The A.O. noticed that the cash deposit made during the demonetization period was much higher than during the normal period. Therefore the A.O. relied on Notification dated 08.11.2016 issued by Department of Economic Affairs, Ministry of Finance, Government of India that the petrol pump was operated by the assessee (namely Reliance Industries Ltd.) was not an authorized Public Sector Oil Marketing Company. During the demonetization period, the assessee ought not to have collected Specified Bank Notes, therefore the same was added as unexplained cash credit u/s. 68 of the Act and also initiated Penalty proceedings u/s. 271AAC of the Act.

3. Aggrieved against the same, the assessee filed an appeal before Commissioner (Appeals) who deleted the addition made by the Assessing Officer by observing as follows:

> *"…The fact and substance of argument by the appellant is that the sales have been accepted by the A.O., (ii) the books of account have not been rejected u/s. 145(3), (iii) only profit on turnover can be assessed as the amount on genuine purchases has to be allowed. The argument of the appellant is technically correct as provisions u/s. 145(3) have not been specifically invoked in assessment order. However, the conclusions and the analysis of the A.O. cannot be ignored, hence, technical objection of appellant is over ruled. Another argument that the real income only to be assessed, is logical and reasonable in this case as the purchases have been found to be genuine as per details in assessment folder. Hon'ble Karnataka High Court in the case of Shankar Khandsari Sugar Mills Vs. CIT 193 ITR 669 (Kar.) has observed that "In the absence of any prejudice to the revenue, and the basis of the tax under the Act being to levy tax, as far as possible, on the real income, the approach should be liberal in applying the procedural provisions of the Act. An appeal is but a continuation of the original proceeding and what the Income-tax Officer could have done, the appellate authority also could do." Therefore, the sales cannot be ignored as they are forming integral part of books of account. Similarly, the allowance for genuine purchases has to be granted. As per the ratio laid down in the case of CIT/vs. Bajaj Tempo Limited 196 ITR 188(SC), "that the beneficial provisions have to be computed liberally so as to promote the purpose for which it was introduced There is clarion call from highest echelon of Government to reduce the litigation in courts so as to enhance the efficiency of justice delivery system in the country. Therefore, the substance of the matter has to be perused through the lenses of independent evidences. For instance, the payment received by Reliance Industries Limited through banking channel is a credible evidence which cannot be ignored.*
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> *Once purchases of petro products are found to be genuine and sale is not allowed an contended by A.O. through SBN (which is highly unlikely given the situation during demonetization period, public was using old currency notes for petrol and diesel and was allowed and would have created law of order situation at any petrol pump such as appellant's it was a volatile situation at many petrol pumps with long queue of customers requiring additional police force at many petrol pumps), the operations would have resulted in Business losses which would have to be allowed to be carried forward for set off against taxable income in subsequent years. Generally, the petro companies do supply the petrol and diesel against advance payment or credit facility allowed by the bank to the retailer against stock. That is the reason that such possibility of losses has been conceived by the appellant and taken in ground no. 3 on this appeal. It would create uncanny situation with no benefit to any of the stakeholders. The real income is to be taxed. The apex Court in the case of CIT vs. British Paints*

India Ltd. has held, " is duty of A.O, to correctly deduce the income, no principle of estoppels, AO is not bound by the method followed in earlier years." In such circumstances, and as per ratio laid down at 187 ITR 688 (SC) in the case of Jute Corporation of India Ltd, I am constrained to deicide to issue in best of the interests of all concerned viz-a-viz the provisions of IT Act, 1961.

The addition has been made by the A.O. u/s. 68 of IT Act, 1961. The provisions u/s. 68 have been carefully examined. I am of the view that the conditions to invoke provisions u/s. 68 are not prevailing in this case. Once cash deposits in bank account are explained to have originated from sales, I am not sure about applicability of provisions u/s. 68 in this case. In my opinion, the addition u/s. 68 of Rs. 1,24,59,500/- is unjustified, therefore, cannot be sustained as per provisions of IT Act, 1961. Hence, the additions of Rs. 1,24,59,500/- is hereby deleted. Ground no. 2 is allowed."

4. Aggrieved against the same, the Revenue is in appeal before us raising the following Grounds of Appeal:

(1) The ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 1,24,59,500/- u/s. 68 of the Act.

(2) The ld. CIT(A) has erred in ignoring the Government notification dated 08.11.2016 which is applicable only for public sector oil marketing companies.

(3) The ld. CIT(A) has erred in not appreciating the factual discrepancies and inconsistencies in the books of account as brought out by the AO and that SBNs were routed in the garb of sales.

(4) The appellant craves, to leave, to amend and/or to alter any ground or add a new ground which may be necessary.

5. The Ld. Sr. D.R. Shri Ashok Kumar Suthar appearing for the Revenue supported the order passed by the Assessing Officer and argued that the assessment order being restored. The Ld. CIT(A) is not correct in deleting the addition made by the Assessing Officer and further Notification dated 08.11.2016 which is applicable only to Public Sector Oil Marketing Companies not to Private Dealers. Therefore the relief granted by the Ld. CIT(A) is not correct in law.

6. Per contra, the Ld. Counsel Shri Sulabh appearing for the assessee submitted before us a Paper Book consisting of Audit Report, Bank Statements showing cash deposits made during demonetization period, Summary chart of month-wise cash analysis for the Financial Years 2015-16 & 2016-17 (during the period of demonetization), Purchase, Sales and Stock of petrol and diesel, VAT returns filed for the month of November and December 2016 and various case laws. The Ld. Counsel further submitted that the notification dated 08-11-2016 will not be applicable, since in Para (e), it is clearly mentioned will be applicable to whom, making purchase of petrol and diesel etc. In the present case, the assessee was selling petrol and collected the SBN from its retail customers. Thus the provisions of section 68 cannot be invoked, since the source of cash deposit is undisputed by the Assessing Officer. The assessee relied on the decision of the ITAT Bangalore in case of Sri Bhageeratha Pattina Sahakara Sangha Niyamitha Vs. ITO in ITA No. 646/Bang/2021 dated 18.02.2022, wherein it is held that the contraventions of the notification issued by RBI would not attract the provisions of section 68 of the Act. The Ld. Counsel further demonstrated before us, there is variation in sales from April to October also. In the month of May, sale was reported at 84.81 lacs , whereas in the Month of August and September, the sales are reported at 53.75 lacs and 59.77 lacs respectively. Thus it is not the case of the assessee, there is sudden increase in the sales during the demonetization period. Thus the assessee counsel relied upon various case laws as follows:

A. CIT Vs. Vishal Export Overseas Ltd Tax Appeal No 2471 of 2009 (Gul HC) (Order Dt 03.07.2012)

B. Shree Sanand Textiles Industries Ltd. vs The Dy.CIT (OSD) Circle-8 Ahmedabad- /ITA No.995/Ahd/2014 (ITAT Ahmedabad) (Order Dt 06.01.2020)

C. The Income Tax Officer, Ward-1 & TPS, Shivamogga Vs. M/s. Manasa Medicals - ITA No.552/Bang/2022 (ITAT Banglore) (Order Dt 31.10.2022)

D. Mr. Atish Singla Vs The Income Tax Officer - ITA.No. 1185/Del/2021 (ITAT Delhi)(Order Dt 31.10.2022)

E. ACIT Vs Shri Chandra Surana - ITA No. 166/JP/2022 (ITAT Delhi) (Order Dt 15.12.2022

F. Sri Bhageeratha Pattina Sahakara Sangha Niyamitha VS ITO - ITA Vs No.646/Bang/2021 (Order Dt. 18.02.2022)

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.*
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> *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.

10. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 18-10-2023

Sd/-	**Sd/-**
(WASEEM AHMED)	**(T.R. SENTHIL KUMAR)**
ACCOUNTANT MEMBER True Copy	**JUDICIAL MEMBER**

Ahmedabad : Dated 18/10/2023

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद