

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.552/Bang/2022
Assessment year : 2017-18

The Income Tax Officer, Ward-1 & TPS, Shivamogga.	Vs.	M/s. Manasa Medicals, JPN Road, Shivamogga. PAN: AATFM 6709K
APPELLANT		RESPONDENT

Appellant by	:	Shri Gudimella V P Pavan Kumar, Jt.CIT(DR)(ITAT), Bengaluru.
Respondent by	:	Shri S.V. Ravishankar, Advocate

Date of hearing	:	31.10.2022
Date of Pronouncement	:	31.10.2022

ORDER

Per Padmavathy S., Accountant Member

This appeal by the revenue is against the order of CIT(Appeals), National Faceless Assessment Centre, Delhi [NFAC] dated 2.8.2021 for the AY 2017-18.

2. The revenue raised the following grounds:-

1. "Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition made u/ s. 68 of I T Act even though assessee had accepted specified bank notes without maintaining the complete account of record of stock, sale of transaction

made with the specified bank notes and records of the persons with whom sales have been effected in SBNs towards 'production of doctor's prescription and proof of identity' as mandated by Notification no. S.O. 3408(E) dated 08-11-2016.

2. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) was right in allowing relief to the assessee without appreciating that vide Notification S.O. 3416(E) dated 09-11-2016 (vide which pharmacies were exempted to accept SBNs) the Central Government had amended the notification of the Government of India, Ministry of Finance published vide S.O. 3408(E) dated 08-11-2016 and as per para 2 of Notification SO 3408(E) it was mandated that assessee was required to maintain complete account of record of stock, sale of transaction made with the specified bank notes and records of the persons with whom sales have been effected in SBNs towards 'production of doctor's prescription and proof of identity' which the assessee failed to comply with.

3. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) was right in allowing relief to the assessee without appreciating that the assessee had not made out any case even prima fade to show that the impugned Notification SO No. 3408 dated 08-11-2016 was either illegal or irrational or it suffers from procedural impropriety or proportionality and in the absence of same, the assessee was bound to comply with the Notifications published by the Central Government of India in Official Gazette"

4. Whether in the facts and circumstances of the case and in law , the Ld. CIT(A) was right in deleting the addition u/ s 68 by not appreciating the fact that though the assessee maintained books of account and entries relating the cash deposits are noted therein but the explanation offered by the assessee towards sources of cash deposits was not found to be satisfactory considering that the same was in violations to Notifications published by Central Government of India and therefore, the addition made u/ s. 68 is justified."

3. There is a delay of 38 days in filing the appeal. In the application for condonation of delay supported by affidavit, the revenue has stated that consequent to Hon'ble Supreme Court decision in the case of UOI v. Ashish Agarwal, Civil Appeal No.3005/2022 dated 4.5.2022, it was

held up with substantial number of cases of reopening u/s. 148A and further the approval of Pr.CIT was also received on 4.7.2022 as he was busy in according approval u/s. 148A. Due to this ensuing cascading effect, the filing of appeal was delayed by 38 days and therefore it was prayed that the delay may be condoned.

4. We have heard the rival submissions on the condonation of delay in filing the appeal. Following the Supreme Court decision of *Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471 (SC)*, we are of the view that there was reasonable cause for the delay in filing the appeal and condone the delay.

5. The assessee is a partnership firm engaged in the business of selling pharmaceutical products. The assessee filed the return of income for the AY 2017-18 on 23.9.2017 declaring a total income of Rs.4,44,70,210. The case was selected for scrutiny for the purpose of verification of "large value of cash deposits during demonetisation" and accordingly notices were issued to the assessee. After verification of the details submitted by the assessee, the AO proposed to make an addition u/s. 68 of the Act as unexplained cash towards cash deposits made during the demonetisation period. The assessee furnished its reply that as per the RBI guidelines, any pharmacy, medical shop was one of the specified entities/persons permitted to accept Special Bank Notes [SBN] of Rs.1,000 and Rs.500 towards sale of medicines. The assessee also submitted that there was an abnormal rush and demand at the counter by people who wanted to procure medicines in exchange of

their SBNs and that sales upto 8.11.2016 was in same lines as in earlier months. The AO called on the assessee to produce the Doctor's prescription and proof of identity as in the Notification No.SO 3416(E) dated 9.11.2016 wherein it is clearly mentioned that for making payments in all pharmacies on production of Doctor's prescription and proof of identity. In response, the assessee submitted that it is dealing in specialised drug meant for mental health and therefore the sales was made only to patients who carry prescriptions issued by Manasa Nursing Home and other Doctors. The assessee also submitted that the said Notification does not mandate to keep the copy of the prescription for record purposes. The AO did not accept the submissions of the assessee and proceeded to treat the cash deposits in the bank accounts out of cash sale as unexplained credit u/s. 68 and levied tax as per the provisions of section 115BBE of the Act.

6. Aggrieved, the assessee preferred an appeal before the CIT(A).

7. Before the CIT(A), the assessee submitted that the cash deposited in the bank account during the demonetisation period from 9.11.2016 to 31.12.2016 was out of cash sales made and such sales was duly accounted in the books of accounts. The assessee also submitted that the accounts were subject to audit where no irregularity was found by the auditors and the assessee has been declaring the sales and purchases in another statutory returns like VAT, etc which were submitted before the AO.

8. The CIT(A) accepted the contentions of the assessee and allowed the appeal by stating that –

“ In the instant case under appeal, the appellant has explained the source of deposits in the bank account of the appellant being the receipts received from the sales affected by the appellant. If the Assessing Officer does not accept the cash deposits in the bank account amounting to Rs.2,12,05,429/- as collection from sales during the course of business, then the corresponding sales ought to have been reduced. On the other hand the assessing officer accepted the purchases and sales made by the Appellant. When the assessing officer had treated the cash sales as unexplained income then the corresponding income from such cash sales should have been reduced from the income of the appellant. It has been observed that the appellant is filing VAT returns and the sales and purchases have all been accounted for and taxes have been duly paid to the government by the appellant. Hence the Assessing Officer was not justified to treat the cash sales as unexplained credits.

From the above, it can be construed that the Appellant in the instant case offered its explanation regarding the source of the cash sales. However, the Assessing Officer did not give any contradictory findings as regards the explanation offered by the Appellant. The Assessing Officer could reject the explanation offered by the Appellant with reference to any mistakes pointed out from the books of account. Therefore, it is clearly understood that there was no ground for the Assessing Officer to invoke the provisions of Section 68 of the Act in the case of the appellant.

In view of the forgoing discussion and taking into consideration of all facts and circumstances of the case it is hereby held that the addition made by the Assessing Officer u/s. 68 of the Act is unwarranted and not maintainable as per law. Accordingly, the Assessing Officer is directed to delete the addition of Rs.2,12,05,429/- made u/s. 68 of the Income Tax Act, 1961. Consequently, the grounds of appeal raised by the Appellant are hereby allowed.”

9. Aggrieved, the revenue is in appeal before the Tribunal.

10. The Id. DR submitted that though the assessee belongs to the exempted category of entities who can accept SBN during demonetisation period, the Circular specifies that the SBN can be accepted only on production of Doctor's prescription and proof of identity which would mean that the same needs to be kept on record by the assessee for future verification. In the given case, the assessee claims that the SBN deposit is arising out of the cash sales, but the same is not substantiated with any evidence. Therefore, it is contended by the Id. DR that the AO had correctly treated the cash deposits during the demonetisation period as unexplained u/s. 68 of the Act.

11. On the other hand, the Id. AR submitted that the assessee is covered by the Category of exempted entities who were permitted to accept SBN during the demonetisation period. The Id. 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 Id. 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 Id. 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 Id. 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 Id. 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 Id. 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 demonetisation 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 demonetisation 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 demonetisation 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).

14. In the result, the appeal of the revenue is dismissed.

Pronounced in the open court on this 31st day of October, 2022.

Sd/-

Sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

(PADMAVATHY S.)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 31st October, 2022.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.