

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE “SMC” BENCH : PUNE
BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER

I.T.A.No.2750/PUN/2024
(Assessment Year 2017-2018)

Dashrath Kisanrao Choudhary, Tirth Petroleum and Tirth Tractors Palam Road, Gangakhed, Maharashtra	vs.	ITO, Ward-1, Jalna
PAN : AAXPC 3952 G		
(Appellant)		(Respondent)
For Assessee :	Smt. Deepa Khare, Advocate	
For Revenue :	Shri Madhan Thirmanpalli, Addl.CIT	
Date of Hearing :	14.05.2025	
Date of Pronouncement :	27.05.2025	

ORDER

PER ASTHA CHANDRA, JM:

The appeal filed by the assessee is directed against the order dated 11.12.2024 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi [**“CIT(A)”**] pertaining to Assessment Year (**“AY”**) 2017-18.

2. The assessee has raised the following grounds of appeal:-

1. *The Ld. CIT(A) has erred in confirming addition of Rs.40,99,500/- on account of cash deposited in bank account in demonetized currency after 03/12/2016 whereas there were no deposits after 03/12/2016 in demonetized currency notes as per certificate issued by bank on 23/12/2016.*

2. *Assessee craves right to add, alter, amend, delete grounds of appeal and submit additional evidence in support of his claim.”*

3. Briefly stated the facts of the case are that assessee is an individual carrying on business of petrol pump as a proprietary

concern in the name of Tirth Petroleum and Tirth Tractors. For AY 2017-18, the assessee e-filed its return of income on 29/11/2017 declaring total income of Rs. 17,58,480/-. The case of the assessee was selected for complete scrutiny under CASS. Accordingly, statutory notice(s) u/s 143(2) and 142(1) along with questionnaire were issued and served upon the assessee. In response thereto, the assessee filed his submissions electronically from time to time. During the course of assessment proceedings, on verification of bank account statements and certificate of documentation form submitted by the assessee, the Ld. Assessing Officer ("**AO**") found that the assessee has deposited an amount of Rs. 37,96,500/- in SBI bank and Rs. 12,03,000/- in IDBI bank in the form of specified bank notes ("**SBNs**") after 05/12/2016 which indicates that the assessee accepted SBNs for selling petrol/diesel/gas after 03.12.2016 which is in contravention of the Govt. Notification No. SO-3598(E) dated 30.11.2016. He, therefore, sought explanation from the assessee as to why the amount of Rs. 40,99,500/- (Rs. 37,96,500 + Rs.12,03,000) should not be treated as unexplained cash credit under the provisions of section 68 of the Act and be added to the income of the assessee. The assessee submitted his reply to the Ld. AO by and stated as under:-

"We have received your above referred show cause notice wherein it is stated that assessee has deposited Rs. 40,99,500 in bank account with State Bank of India in form of Specified Bank Notes i.e. demonetized currency. And it is proposed to treat the same as unexplained cash credit u/s 68 of Income Tax Act, 1969. In this regard it is submitted that the assessee is carrying on the business of Petrol Pump at Gangakhed District of Parbhani. Gangakhed is a small taluka place which is serving to the people of the nearby small villages for their day to day needs. Similarly in case of the assessee, people from villages in the Gangakhed Taluka purchase diesel and petrol from this pump. Initially government had announced that petrol pumps were entitled to accept demonetized currency till

03.12.2016. There were strong rumours that the date would further be extended upto 15.12.2016. Some of the newspapers were also circulating such news. Relying on such social media, circulations and news people of the nearby villages were insisting and quarrelling with the petrol pump people to accept the demonetized currency upto 15.12.2016. Under the presumption of extension of date the demonetized currency was accepted till 13.12.2016. Thereafter through sources it was confirmed that there is no possibility of retrospective extension till 15.12.2015. The amount accepted in demonetized currency notes from 03.12.2016 to 13.12.2016 against sales of petrol and diesel was again the bonafide belief of the assessee. In view it is prayed that in the interest of justice the addition of Rs. 40,99,500 as the amount deposited in bank has gone the government i.e. Hindustan Petroleum Corporation. The assessee is not benefitted by the transaction except the commission on sale of petrol and diesel.”

3.1 The above submission of the assessee was considered but not found acceptable by the Ld. AO and he proceeded to complete the assessment at total income of Rs. 58,57,980/- by making an addition of Rs.40,99,500/- to the returned income of Rs. 17,58,480/- as unexplained money covered under section 68 of the Act and to be taxed under the provisions of section 115BBE(1)(b) of the Act, vide his order dated 17/12/2019 passed u/sec. 143(3) of the Act observing that as per the Government of India's Notification No. SO-3598(E) dated 30/11/2016 it was categorically specified that petrol/diesel/gas under authorization of public sector oil marketing companies were not allowed to accept SBNs for selling petrol/diesel/gas after 03/12/2016 and the assessee has contravened the above instruction, therefore, the sum of Rs. 40,99,500/- is disallowed as unexplained money.

4. On appeal, the Ld. CIT(A) upheld the order of the Ld. AO due to the assessee's non-compliance with the Government Notification (supra) prohibiting SBN acceptance post 03/12/2016 and lack of

evidence substantiating the sources of cash deposits. The relevant findings and observations of the Ld. CIT(A) are as under:-

“4.2 I have gone through the assessment order and record available. Brief facts of the case are that the assessee operates a petrol pump and filed a return of income for A.Y. 2017-18 declaring Rs. 17,58,480. During scrutiny, the assessee was found to have deposited 49,99,500 in specified bank notes (SBN) post-demonetization (after 03.12.2016), violating Government of India Notification No.SO-3598(E) dated 30.11.2016. As per the notification, petrol pumps authorized by public sector oil marketing companies could only accept SBNs until 03.12.2016. Rs. 40,99,500 was treated as unexplained cash credits under Section 68 because as per AO, the closing cash balance on 03.12.2016 was only Rs. 8,99,998, insufficient to explain the deposits. The deposits were made in contravention of the notification prohibiting acceptance of SBNs after 03.12.2016. Acceptance of SBNs beyond the permitted date was due to local rumours of an extension. The assessee explained before AO that the deposits represented sales revenue and were not unexplained money. The proceeds were ultimately remitted to Hindustan Petroleum Corporation Limited (HPCL), and no undue benefit accrued.

The AO rejected the assessee's explanation, citing, clear contravention of the government notification. Lack of evidence supporting the claim that the deposits were entirely from sales. The sum of 40,99,500 was added as unexplained money under Section 68 and taxed under Section 115BBE(1)(b).

4.3 I have gone through the assessment order and record available. Before AO, the assessee failed to substantiate the source of Rs. 40,99,500 with credible evidence. Deposits made in violation of the notification deteriorate the claim that they arose from legitimate business transactions. The acceptance of SBNs after 03.12.2016 directly contravenes the government notification. The assessee failed to demonstrate that the deposits were entirely from sales revenue or to reconcile the cash deposits with the closing cash balance. The discrepancy between the closing balance on 03.12.2016 and the deposits made afterward indicates unexplained cash. The AO's addition of Rs. 40,99,500 as unexplained money under Section 68 and its taxation under Section 115BBE is legally justified due to non-compliance with the notification prohibiting SBN acceptance post-03.12.2016, Lack of evidence substantiating the source of the deposits. Hence, the addition of Rs. 40,99,500 as unexplained money under Section 68 is confirmed and the appeal of assessee is dismissed.”

4. The Ld. AR submitted that the assessee has not deposited SBNs after 03/12/2016 and all the deposits were made prior to 03/12/2016 which are of legal tender notes other than SBNs as per certificate issued by the bank. The deposits were made out of sale

proceeds of petrol/diesel. The Ld. AR further submitted that in the assessment order, Ld. AO has made the cash deposits made in two bank accounts i.e. SBI & ICICI bank which is factually incorrect as the cash deposits in dispute pertain to deposits made in two SBI accounts of the assessee i.e. the account No.35258370321 and account No. 32888783877. The Ld.AO has wrongly mentioned IDBI bank account instead of SBI account No. 32888783877, the fact of which is verifiable from the notice issued u/s 142(1) of the Act dated 09/12/2019 wherein the correct bank account number is mentioned (page Nos. 34-36 of the paper book refers). He submitted that initially, SBI inadvertently issued certificate to the income tax authorities wherein the deposit of SBNs have been shown after 03/12/2016. But later, on enquiry made by the assessee, the bank issued a fresh certificate for both the SBI accounts of the assessee stating that the previous certificate issued by them had some errors in details of legal tender notes of Rs. 1000 & Rs. 500 respectively. The bank also issued certified copy of cash deposit slips evidencing that no deposits of SBNs were made in the said bank accounts after 03/12/2016 (page Nos. 7-29 of the paper book refers). The Ld. AR submitted that the above facts/ documents were duly brought to the notice of the Ld. CIT(A) and the assessee had submitted the certificate(s) issued by SBI dated 23/12/2019 for both the accounts of the assessee along with copies of bank deposit slips duly certified by the bank (page Nos. 1 -4 of the paper book refers) with the Ld. CIT(A). However, the Ld. CIT(A) failed to take the cognizance of the same and confirmed the findings of the Ld. AO. He, therefore,

prayed that the impugned addition of Rs.40,99,500/- should be deleted.

5. The Ld. DR, on the other hand, supported the order of the Ld. CIT(A) and submitted that the assessee has failed to explain the source of cash deposits with substantial documentary evidence as observed by the Ld. CIT(A) in para 4.3 of his appellate order and Ld. AO has also not examined this issue. Therefore, he prayed that the matter may be set aside to the file of Ld. CIT(A)/Ld.AO for verification of the above claim of the assessee.

6. We have heard the Ld. Representatives of the parties and perused the material on record and the Paper book filed by the Ld. AR on behalf of the assessee. We find that the Ld. AO has made the impugned addition of Rs. 40,99,500/- on account of cash deposits by the assessee in his two SBI's bank account(s) in demonetized currency (SBNs) post 03/12/2016 alleging the same to be in contravention of the Government of India's Notification No.SO-3598(E), dated 30/11/2016. The Ld. CIT(A) has confirmed the action of the Ld. AO observing that the assessee has contravened the said Government Notification and also failed to substantiate the source of cash deposits with substantial evidence. Before us, the Ld. Counsel for the assessee has submitted that in the assessment order, the Ld. AO has inadvertently mentioned the cash deposits made in IDBI bank, however, the cash deposits during the relevant AY were made only in two SBI bank accounts and no deposits were made in IDBI bank account. It is the contention of the Ld. AR that the assessee never made any deposits

of illegal tender notes (SBNs) after 03/12/2016 and hence, the assessee has not contravened the Government of India's Notification No.SO-3598(E), dated 30/11/2016 in support of which the assessee has placed on record before the Ld. CIT(A), certificate(s) issued by SBI dated 23.12.2019 along with the certified copies of the bank deposit slips issued by SBI for both the accounts of the assessee wherein the alleged cash deposits are made. He submitted that all these facts/documents were submitted before Ld. CIT(A), in support of the assessee's claim, however, he failed to take cognizance of the same. So far as the source of cash deposits are concerned, he submitted that the same are made out of sale proceeds of petrol/diesel. On perusal of the Ld. CIT(A)'s order, we find some force in the arguments advanced by the Ld. AR that the above submissions/documents filed by the assessee before the Ld. CIT (A) in support of the claim that the assessee did not in fact make any deposit of SBNs post 03.12.16 and the deposits were made out of sale proceeds of petrol/diesel, has not been considered by him while adjudicating upon the impugned issue in spite of mentioning this fact in para 2 "facts of the case" of his appellate order. It is an admitted fact that these submissions/ documents were not furnished before the Ld. AO. The bank certificate(s) is dated to be 23.12.2019 which indicates that it has been obtained after the order assessment order was passed by the Ld. AO on 17.12.2019 and he, therefore did not have an opportunity to examine / verify the claim of the assessee.

7. Considering the totality of the facts and circumstances of the case enumerated above, we deem it appropriate, in the interest of

justice and fair play, to set aside the order of the Ld. CIT(A) and restore the matter back to the file of the Ld. AO to decide the impugned issue afresh on merits in light of the supporting evidence already furnished by the assessee and such other additional evidence as may be called upon and/ or furnished by the assessee during the fresh assessment proceedings, after affording reasonable opportunity of being heard to the assessee. Needless to say, the assessee shall provide requisite support to the Ld. AO in terms of submitting the relevant documentary evidence/details as may be required/ called upon, on the appointed date without seeking adjournment under any pretext unless required for sufficient cause, failing which, the Ld. AO shall be at liberty to pass the appropriate order as per law. Accordingly, the only ground of appeal of the assessee is accordingly allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 27.05.2025.

Sd/-
[MANISH BORAD]
ACCOUNTANT MEMBER

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Pune, Dated 27th May, 2025

vr/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Pune concerned.
4.	D.R. ITAT, “SMC” Bench, Pune.
5.	Guard File.

By Order

//True Copy //

Sr. Private Secretary, ITAT,
Pune Benches, Pune.