

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'B', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND  
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.407/Lkw/2020  
Assessment Year:2017-18

Dy. C.I.T., Range-3, Lucknow.	Vs.	M/s Shree Pateshwari Electricals and Associates Industries Pvt. Ltd. 5 <sup>th</sup> Floor, Rohit Bhawan, Sapru Marg, Lucknow. PAN:AAECS0222K
(Appellant)		(Respondent)

Appellant by	Shri Harish Gidwani, D.R.
Respondent by	Shri K. R. Rastogi, C. A. Shri Shubham Rastogi, C.A.
Date of hearing	04/08/2022
Date of pronouncement	17/08/2022

**ORDER**

**PER T. S. KAPOOR, A.M.**

This is an appeal filed by the Revenue against the order of learned CIT(A), dated 24/09/2020 pertaining to assessment year 2017-2018. In this appeal the Revenue has raised the following grounds of appeal:

- "1. *That the learned CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition of Rs.1,05,48,878/- made u/s 68 r.w.s. 115BBE of the I.T. Act, 1961 with respect to amount of cash deposited in bank accounts during the demonetization period.*
2. *That the learned CIT(A)-2, Lucknow has erred in law and on facts in ignoring the fact that the assessee did not submit evidences even hotel room rent received from*

*customers or any invoices pertaining to cash deposited in bank accounts during the demonetization period.”*

2. Learned D. R., at the outset, submitted that the assessee had deposited cash in the bank account during the demonetization period and the assessee could not explain the abnormal rise in the cash collections and therefore, the Assessing Officer had rightly made the addition u/s 68 of the Act and has imposed tax as per the provisions of section 115BBE of the Act. It was submitted that the learned CIT(A) has deleted such addition even though the assessee did not submit evidence for increase in the cash income and evidence regarding the IDs of customers and names of customers were also not submitted before Assessing Officer and therefore, it was prayed that the addition deleted by learned CIT(A) be reversed and the order of the Assessing Officer be upheld.

3. Learned counsel for the assessee, on the other hand, submitted that the assessee is running a petrol pump and is also running two hotels in Nainital and there was some income from a theatre and from agricultural activities during the year under consideration. Learned counsel for the assessee in this respect invited our attention to the assessment order page 3 where the Assessing Officer has noted the month-wise cash deposits from various activities of hotel as well as from Vijay Picture Palace. Learned counsel for the assessee submitted that for the petrol pump business the Assessing Officer did not make any addition as in that activity the acceptance of old cash notes was permitted. As regards the deposits from the activities of hotel and Vijay Picture Palace, Learned counsel for the assessee submitted that these were regular business receipts of the assessee which were received by the assessee in cash and for which necessary books of account including inward register containing the names of the customers along with ID of the customers were maintained. Learned

counsel for the assessee submitted that the findings of the Assessing Officer that there were no registers showing details of room rent and regarding non obtaining of KYC of customers is not correct and in this respect our attention was invited to the copy of order of learned CIT(A). our specific attention was invited to page 10 of learned CIT(A)'s order where the learned CIT(A) has noted that the appellant had filed its VAT return, service tax return and luxury tax return which are not found to be in variance with the accounting and tax records. It was submitted that learned CIT(A) has also noted that VAT assessment and luxury tax assessment has been completed by respective state tax authorities and sales has been accepted by the VAT authorities. Learned counsel for the assessee submitted that the luxury tax calculation is done on the basis of record of customers which the assessee has been maintaining as per the requirement of the hotel industry also. Our attention was also invited to the detailed finding of learned CIT(A) wherein she has analyzed the entire sales of the year under consideration and has compared it with the previous year and after noting down the complete facts has rightly confirmed the part addition on the basis of net profit ratio applied on abnormal collection. As regards income from theater, the Learned counsel for the assessee submitted that learned CIT(A) has held that there were no adverse findings by Assessing Officer and as regards agricultural income the learned CIT(A) has held that assessee has been holding land and has been regularly declaring agriculture income and therefore, it was submitted that there is no infirmity in the order of learned CIT(A). Learned counsel for the assessee heavily placed his reliance on the order of learned CIT(A).

4. We have heard the rival parties and have gone through the material placed on record. We find that the assessee is engaged in running of petrol pump as well as running of two hotels in the name of Pathik Hotel and

Balrampur House, Nainital. The assessee also earned agricultural income as well as income from Vijay Picture Palace. The Assessing Officer during the assessment proceedings accepted the cash generated by the assessee from the petrol pump activity however, he held that there was abnormal increase in cash deposits in the month of December 2016 as compared to earlier months of the year and in this respect has reproduced a chart of cash deposits at page 3 of his order. The Assessing Officer though has accepted the cash generated by the assessee in the months of April to November 2016 and in the month of January to March 2017 but he has not accepted the cash generated during the month of December 2016 and made the addition for cash generated in the month of December 2017 from the activities of hotel as well as from the activities of Vijay Picture Palace. The Assessing Officer while making the addition has held that the assessee has not submitted any evidence including any register showing details of room rent and KYC of customers from whom cash payments were received. The learned CIT(A) on the contrary has held that the assessee has submitted monthly/quarterly VAT returns/service tax return and luxury tax return with respect to above business of each unit and also furnished comparative financial details of financial year 2015-16 and 2016-17 giving details of deposits in bank in both the years as well as details of cash in hand. Learned CIT(A), at page 4 of her order, has noted that assessee had submitted month-wise and date wise restaurant sale and room rent sale along with name of the customers. The learned CIT(A) further noted that the assessee had also submitted month-wise comparative details of room rent received in respect of both the hotels. The findings of learned CIT(A) are based on the examination of assessment records as no fresh evidence has been submitted before her and neither the Revenue has alleged that some additional evidences were filed before her. As regards the deposits from receipt of Vijay Picture Palace, the learned CIT(A) held that it has

received rent from booking of hall and space for exhibition and has also submitted the date of receiving and name of the persons from whom the booking charges have been received. In respect of agricultural income, the learned CIT(A) has noted that the assessee owns 4.4920 hectare of land at Balrampur from where the sale proceeds of various agricultural produce and sale of Sheesham trees is received. Learned CIT(A) noted that the assessee has also submitted copy of Khasra Khatauni of the aforesaid land. The detailed findings of learned CIT(A) with respect to each unit is reproduced below:

**Addition of Rs. 39,65,892/- in Unit Pathik Hotel, Balrampur**

*The AO has added the entire cash deposited by the appellant for Rs.39,65,892/- which included the food and beverages sale proceeds also. The sale of food and Beverages is made to the in house occupants as well as to the walk in guest. The A.O. has not doubted the Restaurant sale proceeds deposited in Bank during demonetization period.*

*Regarding receiving from Room sales, the detailed record of the customers, staying in the hotel accommodation with name of the customer and amount received in cash was submitted before the A.O. The A.O. has not doubted the evidences submitted and never asked for Invoices and Register showing details of Room Rent. Month wise details of Room Rent received and room rent received in Cash only from April 2016 uptill 08.11.2016 is reproduced as under:-*

MONTH	ROOM SALE	room sale only in cash	% of Room sale in cash
APRIL	625879.00	366814.00	58.61
MAY	808590.00	600964.00	74.32
JUNE		607711.00	88.76

	684682.00		
JULY	740436.00	553262.00	74.72
AUGUST	544562.00	469670.00	86.25
SEPTEMBER	593304.77	493987.00	83.26
OCTOBER	764094.00	613078.00	80.24
01. 11.2016 to 08.11.2016	98044.00	31375.00	32.00
GRAND TOTAL	4859591.77	3736861	76.897

*The Comparative details of room rent received in A. Y. 2016-17 and room rent received in A. Y. 2017-18 along with increase in room sales from A. Y. 2016-17 to A. Y. 2017-18 is reproduced as under:-*

	Room Rent AY 2016-17	Room Rent 2017-18	Jump in Room sales from AY 2016- 17 to 2017- 18	% Jump
Room rent	4899946	6995828.77	2095882.77	42.77

*On perusal of the above details, there is a jump of Room Rent Sale as compared to A.Y. 2016-17 is Rs.20,95,882/- being 42.77%. It is pertinent to note here that the hotel operated at Balrampur is a budget hotel, in which room rent is low.*

**Addition of Rs. 63.25,991/- in Unit-Balrampur Hotel, Nainital**

*The Appellant is running a hotel in the name of Balrampur House, Nainital, Uttarakhand, which is a tourist destination with Restaurant*

*since past 25 years and it was claimed that the cash deposit is out of Sale of Room Rent and Restaurant Sales.*

*Similar to the unit at Balrampur, food is sold to the in house occupants as well as to the walk in guest. The A. O. has not doubted Restaurant sale proceeds deposited in Bank during demonetization period, in this case as well. However the total cash deposited by the appellant have been added to the income, ignoring the fact that the amount is inclusive of the food sales made by the units.*

*A perusal of the submission of the appellant shows that it had submitted, detailed record of the customers, staying in the hotel with name of the customer and amount received in cash was submitted before the A. O. Cash book and detail of Service Tax and Luxury tax paid on Room Rent and VAT on Restaurant sales were also filed before A.O. The A.O. had not doubted the evidences submitted and never asked for invoices and register showing details of Room Rent.*

*Month wise details of Room Rent received and room rent received in Cash only from April 2016 uptill 08.11.2016 is reproduced as under:-*

<i>MONTH</i>	<i>ROOM SALE</i>	<i>Room sale only in cash</i>	<i>% of Room sale in cash</i>
<i>APRIL</i>	<i>900769.07</i>	<i>130210.11</i>	<i>14.46</i>
<i>MAY</i>	<i>1577079.72</i>	<i>272220.06</i>	<i>17.26</i>
<i>JUNE</i>	<i>2182777.97</i>	<i>428601.26</i>	<i>19.64</i>
<i>JULY</i>	<i>537957.4</i>	<i>173811.56</i>	<i>32.31</i>
<i>AUGUST</i>	<i>481984.08</i>	<i>82723.86</i>	<i>17.16</i>
<i>SEPTEMBER</i>	<i>1102604.2</i>	<i>462631.97</i>	<i>41.96</i>
<i>OCTOBER</i>	<i>953893.02</i>	<i>412770.93</i>	<i>43.27</i>

01.11.2016 TO 08/11/2016	246780.41	20406.72	8.27
<b>GRAND TOTAL</b>	<b>7983845.87</b>	<b>1983376.47</b>	<b>24.842</b>

*The Comparative details of room rent received in A. Y. 2016-17 and room rent received in A. Y. 2017-18 along with increase in room sales from A. Y. 2016-17 to A. Y. 2017-18 is reproduced as under:-*

Month	Room rent AY 2016-17	Room rent AY 2017-18	Jump in Room Rent	% Jump In Room Rent
April	728605.03	900,769	172,164	23.63
May	16202587	1,577,080	43,178	(2.66)
June	2083200.71	2,197,576	114,376	5.49
July	439326.81	537,957	98,631	22.45
August	397020.63	481,984	84,963	21.40
September	419801.17	1,102,605	682,804	162.65
October	496037.3	953,893	457,856	92.30
November	477461.1	673,436	195,975	41.05
December	307345.3	712,601	405,255	131.86
January	237681.49	501,715	264,034	111.09
February	344301.86	210,708	133,594	(38.80)
March	676889.19	551,749	125,140	(18.49)
<b>Total</b>	<b>8227928.79</b>	<b>10402073.53</b>	<b>2174144.7</b>	<b>26.42</b>

*On perusal of the above details, there is a jump of Room Rent Sale as compared to A. Y. 2016-17 is Rs. 21,74,1457- being 26.42%.*

*The A. O. has stated in the assessment order that the Appellant had not furnished evidences w. r. t. details of room rent received from customers and did not submit any invoices pertaining to the said period. However it is a fact that the AO never conducted any detailed analysis of the sale claimed by the appellant. The hotel situated at Nainital is a luxury hotel, and mostly a seasonal one. The AO has not bothered to analyze the occupancy ratio of the appellant and its correlation with the capacity of hotel, the occupancy percentage disclosed by the appellant was not compared with that of other hotels in the same vicinity and facility. The AO failed to make any third party enquiry regarding the commission paid by the appellant to various tour operators and booking providers which could have provided insight to the claim made by the appellant. The Hotel industry is a service sector related industry, which requires a different approach for verification There are all types of customers who come to stay in the hotel, some are sponsored and some of them come on a discounted tour operator schemes. It is practically impossible to ascertain the financial capacity of the customer by the details it furnishes in the hotel booking/ check in register. The information submitted by the appellant was not properly analysed . The AO has accepted the food and beverage sale of the appellant, this includes in house as well as walk in customers too. a simple analysis would have shown the details of the in house sale of the appellant.*

*An analysis of Room Rent Sales of Unit Pathik Hotel, Balrampur, there is a jump of 42.77% during A.Y. 2016-17 and jump of 26.42% in Balrampur Hotel, no abnormal increase in Room Rent in the month of September and October 2016 is noticed in this case. In the case of Unit - Nainital Room Rent in the month of September there is a jump of 162.65% and in the month of October 2016 there is a jump of 92.30% as compared to A. Y. 2016-17. It is also seen that A. O. has accepted the cash sales and cash deposits for the month of December 2016 and January 2017 where there is a jump of 131.86% and 111.09% respectively.*

*The unit wise Profit and Loss Account from which comparative details of the net profit is as under:*

*PATHIK HOTEL*

	<i>AY 2016-17</i>	<i>A Y 2017-18</i>
<i>Sales</i>	<i>10486397</i>	<i>12378580</i>
<i>Net profit</i>	<i>372370</i>	<i>768933</i>
<i>N P %</i>	<i>3.55</i>	<i>6.21</i>

*BALRAMPUR HOUSE  
NAINITAL*

	<i>AY 2016-17</i>	<i>A Y 2017-18</i>
<i>Sales</i>	<i>16163667</i>	<i>25702943</i>
<i>Net profit</i>	<i>1499709</i>	<i>4463312</i>
<i>N P %</i>	<i>9.28</i>	<i>17.36</i>

*The above chart reflects that there is increase in net profit percentage of 2.66% in the case of Pathik Hotel and 8% increase in Net Profit percentage in the case of M/s Balrampur House, Nainital.*

*It is also on record that the Appellant has filed its VAT Return, Service Tax Return and Luxury Tax Return which are not found to be in variance with the accounting and tax records. The VAT Assessment and Luxury Tax Assessment has been completed by the respective State Tax Authorities and the sales has been accepted by the VAT Authorities.*

*Cash Sales and Corresponding Cash Deposit into the bank account of the Appellant has been a regular feature of the Appellant's business since past several years. The same is clearly borne out from the details of cash sales and cash deposits made by the Appellant in previous financial year. The same trend has also continued after the demonetization period. The fact that cash sales and cash deposit are regular feature of the Appellant's business has not been controverted by the Assessing Officer.*

*The Appellant maintains regular books of accounts which are audited by the Independent Auditor under the Companies Act 2013 as well as under the Income Tax Act 1961. The sales and the corresponding cash deposit in the bank are duly reflected in the books of the*

*Appellant . The books of accounts and the entries pertaining to cash sales and cash deposits has been accepted by the Department in the assessment framed in the past years. The Audited Financial Statements from part of the regular return filed by the Appellant for the respective year. The AO has not rejected the same under section 145(3) of the Act and thereby accepted the result obtained through them. The A. O. has accepted the Trading Results being Net Profit and also accepted the Audited Books of Accounts which have been audited under Companies Act 2013 and under the Income Tax Act 1961 The taxable income has been offered to tax and due tax has been paid thereon and thus provisions of section 68 cannot be invoked and cash deposited cannot be treated as unexplained cash credit. The treatment of the cash deposits as unexplained cash credits u/s 68 by the A.O has resulted in double taxation of the same amount, once in the form of cash sales already offered to tax by the Appellant at the rate of tax applicable to companies and again by way unexplained cash credit on deposits arising from such sales u/s 68 at higher rates specified u/s 115BBE.*

*Section 115BBE of the Act is a machinery provision to levy tax on income and it is not to enlarge the ambit of section 68 of the Act to create a deeming fiction to tax any sum already credited/offered to tax as income.*

*Section 68 of the Act traditionally applies to unexplained 'cash credit' like loans, deposits, advances, share capital, etc. and not to sums already offered to tax as income by the Appellant in its return of income at the highest slab rate. Such recourse is unwarranted keeping in mind the objective to introduce section 115BBE of the Act was only to curb the practice of laundering of unaccounted money by taking advantage of the basic exemption limit.*

*7.3 In the case of Shree Sanand Textiles Industries Ltd in ITA No. 995/Ahd/2014 dated 06.01.2020- it has been held - (Para 9.3) Admittedly, the amount of sale as claimed by the Appellant was offered to tax by reflecting the same in the trading and profit and loss account. This fact has not been doubted by the authorities below. However, the existence of the parties was not proved by the Appellant based on the documentary evidence during the proceedings. Accordingly, the learned CIT (A) treated the amount received from such parties as unexplained cash credit under section 68 of the Act. In this connection we note that the impugned amount has been taxed twice firstly the same was treated as sales and secondly the same was*

*treated us unexplained cash credit under section 68 of the Act. Even if we assume that the action of the learned CIT (A) is correct i.e. the impugned amount is representing the cash credit as provided under section 68 of the Act. Then, the learned CIT (A) was duty-bound to reduce the same from the amount of sales as the same does not represent the sale but unexplained cash credit.*

*(Para 9.6) We also note that the provisions of section 68 cannot be applied in relation to the sales receipt shown by the Appellant 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.*

**7.4 In the case of - CIT Vs Kailash jewellery House in ITA NO. 613 OF 2010 (Delhi HC) -** *The Hon'ble court confirmed the observation of The tribunal and held that The tribunal observed that it is not in dispute that sum of Rs.2458400/- was credited in the sales account & had been duly included in the profit disclosed by 'a' in its return. It is in these circumstances that the Tribunal Observed that the cash sales could not be treated as undisclosed income and no addition could be made once again in respect of the same.*

**7.5 In the case of Vishal Exports Overseas Ltd in ITA 2471 of 2009 (Gujarat HC) -** *it was held that "Addition of same amount once again u/s 68 of the Act would tantamount to double taxation of the same income.*

**7.6 In the case of M/s Singhal Exim P. Ltd. ITA No. 520/Del/2018 dated 12.04.2019 has held that -** *In view of the above, we hold that the Assessing Officer was not right in concluding that the high sea sales are not genuine. Moreover, Section 68 would also not be applicable in respect of recovery of sales consideration. Once the assessee sold the goods, the buyer of the goods becomes the debtor of the assessee and any receipt of money from him is the realization of such debt and therefore, we are of the opinion that in respect of recovery of sale consideration, Section 68 cannot be applied. In view of the above, we find no justification for upholding the addition of Rs.59,51,29,517/-.*

*Thus, it is clear that the intention of the Legislature behind introduction of section 115BBE was not to bring to tax genuine cash credits already offered to tax as income by the Appellant at higher tax rates and accordingly, such recourse primarily based on presumptions/ preponderance of probabilities is clearly unwarranted*

*and accordingly, provisions of section 68 of the Act cannot be invoked in respect of the Cash deposits of Rs.1,18,02,883/-.*

*The A. O. has added the entire cash receipts deposited by the appellant in its various units. The A. O. has not given any reason for the same except that no invoices and details of customers along with their id proof were provided. The A. O. has not considered the fact that the total deposits also contain food and beverage sales made by the appellant. Thus, to tax the entire receipt is incorrect. It has been held through number of judgment that nobody earns gross receipts, but it is the actual income which is engrained in the said gross receipts which need to be taxed.*

*The appellant has shown extra jump of Rs.21,74,144/- being 26.42% in Room Rent in the Unit Balrampur House, Nainital. Similarly the appellant has shown extra jump of Rs.20,95,882/- being 42.77% in unit Pathik Hotel, Balrampur. The total amount of Rs.42,70,026/- (21,74,144+20,95,882) has been disclosed as extra sales in the year under consideration, which is over and above the normal sales reported by it over the previous year.*

*As discussed earlier the appellant has disclosed Net profit percentage of 6.21% in the unit Pathik Hotel and Net profit percentage of 17.36% in the Nainital. Considering the facts and circumstances of the case extra profit addition @ 20% is being made on the amount of Rs.42,70,026/- which comes to Rs.8,54,005/- as against the addition of Rs.10291883/-(3965892+6325991) made by the A.O. As already discussed that said amount has already been disclosed in the Books of A/c hence the addition is out of the purview of Section 68 of the Act.*

*As far as the issue of addition of Rs.5,00,000/- w. r. t. the amount received from booking of Hall and Space for exhibition is concerned. It is evident that the appellant had submitted the name of the person who had booked the space and the AO has not given any adverse finding on the aforesaid details neither has conducted any independent inquiry to controvert the explanation of the appellant. The said property is located in a small city and it is not very tough to find out the no. of exhibitions made there, but the AO has not made any such investigation. The AO has made the addition purely on assumption and without bringing any cogent material on records, Accordingly, the addition made u/s 68 for the above amount is hereby deleted.*

*Regarding the addition of Rs.10,00,000/- out of Agriculture Sale proceeds, it is seen that the appellant has regularly shown Agricultural Income in the ITR filed by it. The Agriculture holdings of the appellant are old and agricultural activities have been carried out for last several years and accepted by the department. Thus to consider the same as bogus would be incorrect and against the principal of continuity. Considering the facts & circumstances of the case the same is restricted at Rs.4,00,000/- and to be assessed as Income from other sources and taxable under the normal provision of Income Tax Act."*

4.1 From the above findings of learned CIT(A), we observe that learned CIT(A) has categorically held that assessee had maintained and submitted detailed record of the customers staying in the hotel with the name of the customer and the amount received in cash. The learned CIT(A) has further held that service tax and luxury tax was paid on room rent and VAT on restaurant sales was also paid. He has specifically held that these evidences were filed before the Assessing Officer and the Assessing Officer had not doubted the evidences. The learned CIT(A) has further observed that the Assessing Officer did not carry out any independent enquiry and no tour operator was examined to verify the claim of the assessee. She has further held that the restaurant sales were not doubted by the Assessing Officer and all the restaurant sales have been accepted by the Assessing Officer. We further find that the learned CIT(A) has compared the increase in collections during the year under consideration with the collections in the immediately preceding year and after noting down the percentage increase in net profit in the two units of hotel, has arrived at the conclusion that only the profits earned on abnormal increase in the sales can be taxed and she, relying on various case laws, has upheld the addition equivalent to 20% of abnormal increase in turnover. Regarding the booking of hall and space for exhibition, the learned CIT(A) has rightly held that the Assessing Officer has not given any adverse findings on the details submitted by the assessee that assessee has earned income from booking of the hall and assessee had

submitted the name of the person also from whom income was received. The learned CIT(A) has correctly held that the Assessing Officer has not carried out any such investigation in this regard and has made addition only on the basis of assumption and without bringing any cogent material on record. Similarly, regarding addition of agricultural income of Rs.10 lac, the learned CIT(A) has held that assessee has been carrying out agricultural activities for the last several years and which has been accepted by the Department and she has restricted the addition of Rs.10 lac to Rs.4 lac. The order of learned CIT(A) is quite exhaustive and detailed finding has been recorded. We do not find any infirmity in the order of learned CIT(A). Therefore, the appeal of the Revenue stands dismissed.

5. In the result, the appeal of the Revenue stands dismissed.

(Order pronounced in the open court on 17/08/2022)

**Sd/.**  
**( A. D. JAIN )**  
**Vice President**

**Sd/.**  
**( T. S. KAPOOR )**  
**Accountant Member**

Dated:17/08/2022  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar