

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "H" NEW DELHI]

BEFORE SHRI G. S. PANNU, PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No. 1130/Del/2021
निर्धारणवर्ष/Assessment Year: 2017-18

Income Tax Officer, Ward : 19 (3), New Delhi.	<u>बनाम</u> Vs.	M/s. Patent Tea Company Pvt. Ltd., Khasra No. 147 & 148, Naugwan Road, Amroha, Uttar Pradesh-244 221. PAN : AAACP6951A
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AND

C. O. No. 115/Del/2022
[in आ.अ.सं./I.T.A No. 1130/Del/2021]
निर्धारणवर्ष/Assessment Year: 2017-18

M/s. Patent Tea Company Pvt. Ltd., Khasra No. 147 & 148, Naugwan Road, Amroha, Uttar Pradesh-244 221. PAN : AAACP6951A	<u>बनाम</u> Vs.	Income Tax Officer, Ward : 19 (3), New Delhi.
अपीलार्थी / Appellants		प्रत्यर्थी / Respondents

निर्धारितकीओरसे / Assessee by :	Shri Vishal Agarwal, Advocate;
राजस्वकीओरसे / Department by :	Shri Sanjay Tripathi, Sr. D.R.

सुनवाईकीतारीख/ Date of hearing :	14/02/2023
उद्घोषणाकीतारीख/Pronouncement on :	13/04/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal and the cross objection are filed by the Revenue and the assessee against the order of the Id. Commissioner of Income Tax (Appeals) Delhi-7 [hereinafter referred to CIT (Appeals)] dated 26.08.2020 for assessment year 2017-18.

2. The Id. Counsel for the assessee, at the outset, submits that the Cross Objection filed by the assessee is not pressed. Accordingly, the cross objection of the assessee is dismissed as not pressed.

3. Coming to the appeal of the Revenue the Revenue challenged the order of the Id. CIT (Appeals) in deleting the addition of Rs.2,39,00,000/- made by the Assessing Officer in respect of cash deposited by the assessee out of cash sales made during the assessment year under consideration. In the course of assessment proceedings the Assessing Officer noticed that so far as increase in cash sales/cash received from debtors is disproportionate during the period 1.11.2016 to 8.11.2016 as compared the corresponding period during the previous year from 1.11.2015 to 8.11.2015. He observed that cash sales/cash received from debtors

increased substantially during the period 1.11.2016 to 8.11.2016 to Rs.1,76,46,778/- during demonetization period in Amroha and Delhi office as against Rs.67,93,450/- during the corresponding period of the previous year i.e. 1.11.2015 to 8.11.2015 and the assessee has not explained the reasons for such large variations. It is the observation of the Assessing Officer that the assessee has deposited cash of Rs.2,39,00,000/- in the month of November, 2016 in its bank account was of old notes of the specified bank notes from the bank statement provided by the IDBI Bank observing that the assessee has not submitted supporting evidence to establish the source of large cash received during the months of October, 2016 and November, 2016 as compared to previous year. The Assessing Officer concluded that the assessee has not been able to establish the identity and creditworthiness of the creditors and genuineness of the transactions and accordingly addition was made under section 68 of the Income Tax Act, 1961 (the Act).

4. On appeal the ld. CIT (Appeals) deleted the addition made by the Assessing Officer.

5. The ld. DR submits that the assessee has made huge cash deposits into bank account during the demonetization period and no satisfactory explanation was given and, therefore, the Assessing Officer has rightly treated the said deposits as unexplained credits under section 68 of the Act. He strongly placed reliance on the order of the Assessing Officer.

6. On the other hand, the ld. Counsel for the assessee reiterating the submissions made before the ld. CIT (Appeals) submits that the assessee is maintaining regular books of accounts and the books of accounts are audited, as the assessee falls under the provisions of section 44AB of the Act. The assessee is maintaining regular books in day to day course of its business which included cash book, general ledger, bank book and stock register and the assessee has duly filed the copy of audited accounts along with books audit report under section 44AB of the Act along with its return of income. The assessee in the course of assessment proceedings furnished copy of complete books of accounts including cash book, ledger accounts, sale account, purchase account, stock register before the Assessing Officer along with copies of bank statement showing the cash deposits which were fully recorded and verified from the books of accounts maintained in the regular course of business. The sales made by the assessee are duly accounted for as income in the books of accounts and when the sales have been made out of stocks in hand in the regular course of business there is no justification in treating the cash sales, cash deposits as unexplained credits.

7. The ld. Counsel further submits that there was no adverse comment made by AO on the books of accounts maintained by the assessee and the books of accounts were not rejected by applying the provisions of section 145 of the Act. The Assessing Officer duly accepted the opening stock, purchases, sales, closing stock and expenses incurred by the assessee in the regular course of books

and no discrepancy has been found by the Assessing Officer in the regular books of accounts maintained by the assessee. The method of accounting of income followed by the assessee also accepted by the Assessing Officer. The Assessing Officer also did not found out any defects in the stock of the assessee.

8. The Id. Counsel for the assessee further contended that the deposits during demonetization period relates to sale proceeds from cash sales of each month as evident from the books of accounts and sale invoices of the assessee and the entire sales are reported in the VAT return submitted before the State Government on monthly basis and tax on sales for each month including the period of demonetization was deposited on monthly basis and the copy of VAT returns for the year was also placed on record before the Assessing Officer vide reply dated 26.11.2019. Therefore, the Id. Counsel for the assessee submits that considering all these evidences/submissions the Id. CIT (Appeals) had rightly deleted the addition made under section 68 of the Act and the order of the Id. CIT (Appeals) be upheld.

9. Heard rival submissions perused the orders of the authorities below. The Assessing Officer while completing the assessment noticed that the assessee made huge deposits into bank account and according to him there are huge variations in cash deposits corresponding to the same period in the previous year and, therefore, he has concluded that there was no proper explanation given by the assessee in respect of cash deposits and accordingly considered these deposits as unexplained credits under section

68 of the Act. The Id. CIT (Appeals) considering the submissions and evidences placed on record deleted the disallowances, observing as under:-

“4.3 The contentions of the AR have been considered and the order of the AO has also been perused

4.3.1 It is seen from the Bank certificate produced by the appellant, (which is also pasted below) that out of total deposits of Rs.2,64,00,000/-, the SBN/old currency was only 1,16,50,000/- thereby leaving Rs.1,47,50,000/- as new currency.

“ **IDBI BANK**

CIN L65190MH200400148838

Ref.: IDBI/1002/2020-21/001

14 July 2020

Patent Tea Company Pvt Ltd.,
Naugawan Road,
Amroha-244221.

Dear Sir.

Sub:- **Details of Old Notes/Specified Bank Notes**
(Rs.1,000/& Rs500/)

Please refer your letter dated 26/06/2020 seeking details of old notes/Specified Bank Notes deposited in your A/C No 1002102000000037 during 08/11/2016 to 31/12/2016 in this connection we confirm that total aggregate cash deposit in account no1002102000000037 during 08/11/2016 to 31/12/2016 is Rs2,64,00,000/-(Two Crore Sixty Four Lakh Only) out of which Specified Bank Notes SBN) old notes Rs.1000- & Rs.500/) cash deposited Rs.1.16,50,000/-(One Crore Sixteen Lakh Fifty Thousand Only). Details of Specified Bank Notes SBN) deposited in your AC No. 1002102000000037 during 08/11/2016 to 31/12/2016 as per records available at branch are mention hereunder:

Sr. No.	Date	No. of Notes (Rs 1000)	No. of Notes (Rs 500)	Amount Deposited
1.	10-11-2016	4900	8800	Rs.93,00,000/-
2.	10-11-2016	0	3500	Rs17,50,000/-
3.	19-11-2016	400	400	Rs.6,00,000/-

In case of any further information/clarification required in the matter please contact IDBI Bank Amroha branch.

Yours faithfully
 Sd/-
 (Vivek Verma)
 Branch Head,
 IDBI Bank, Amroha.”

Therefore, the AO cannot take that inference that the full currency deposited was only old currency/SBNs. As far as, the balance currency notes are concerned, it is seen that there were sufficient sales available with the appellant as the business of sale of Tea is carried out in Mofussil Areas towns of Amroha district as well as in the vicinity of Moradabad like town area of Gajraula, Nazibabad, Dhampur, Bijnor, Sambhal, Chandausi, Hasanpur etc. where the shopkeepers deals in cash only. An analysis of the cash sales of the appellant for the past 5 years is tabulated below:

YEAR.	CASH SALES (including consignment sales)	CASH DEPOSITED IN BANK	TOTAL SALES (including consignment sales)	PERCENTAGE OF CASH SALES TO TOTAL SALES.
2016-17	21,03,45,706	20,56,00,000	25,38,11,806	82.87%
2015-16	18,94,91.410	18,12,54,500	21,40,78,145	88.52%

2014-15	22,26,01,385	21,84,13,261	24,59,45,540	90.51%
2013-14	18,91,30,121	18,76,37,300	22,10,79,913	85.55%
2012-13	16,35,56,683	16,10,12,500	18,66,07,118	87.64%

It is seen from the analysis cash sales made by the appellant during the last 5 years that the cash sales percentage of 82.87% during the FY 2016-17 is lowest among the in the past 5 years. Therefore, the contention of the AO that the assessee is showing higher cash sales during the year does not carry any merit.

4.3.2 It is seen that the case of the assessee falls under the provisions of the section 44AB and the books of account are audited. The assessee firm maintained regular books of accounts in the day to day course of business which included cash book journal ledger, bank book and stock register and the books of accounts so maintained in regular course of business are also audited u/s 44AB of the Act. The assessee firm has duly filed the copy of its audited accounts along with tax audit report u/s 44AB of the Act along with its return of income. Copy of complete books of accounts including cash book ledger accounts sale account purchase account etc. were furnished to the A.O. during assessment proceedings along with copies of bank statements to show that the cash deposited is fully recorded and verifiable from the books of accounts maintained in the regular course of business. The sales made by the assessee are duly accounted for as income in the books of accounts and corresponding entries of stocks have been made in the stock registers when the sales have been made out of stocks in hand in the regular course of business.

It is further submitted by the AR that Copies of complete books of accounts including cash book, ledger accounts, sale account purchase account etc. were furnished to the A.O. during assessment proceedings. There are no adverse comments on the books of account and the same are also not rejected by applying the provisions of section 145. A perusal of the assessment order passed by the Assessing Officer would show that the A.O. has duly accepted the opening stock purchases, sales, closing stock, and all

expenses incurred by the assessee in the regular course of business and has also accepted the books of accounts maintained in the regular course of business. It may further be evident that no discrepancy has been found by the Assessing Officer in the regular books of accounts maintained by the assessee and the method of accounting of income followed by the assessee also stands accepted. The Assessing Officer has also not pointed out any discrepancy in the stocks of the assessee. It is also an undisputed fact that the bank accounts of the assessee are fully accounted for in regular books of accounts of the assessee. All the deposits in these bank accounts including deposits made in cash are fully recorded in the regularly maintained cash book and ledger of the assessee. No discrepancy has been pointed out by the AO in any of these accounts or in the cash book of the assessee.

It was further contended that the cash available with the assessee firm is fully verifiable from the regularly maintained cash book and books of accounts maintained by the assessee in the day to day course of its business and the deposit of such cash is also fully recorded and accounted for in such books of accounts. It was thus explained that the cash deposited by the assessee firm in its bank accounts during the instant year is fully recorded in the books of accounts maintained by the assessee firm in the regular course of its business and the nature and source of its acquisition was also duly verifiable with reference to the books of accounts sale bills stock register etc. maintained by the assessee in the regular course of its business. It is further contended by the AR that the learned Assessing Officer has not pointed out any suppression or inflation in purchases, sales, expenses and has also not pointed out any discrepancy in the stocks declared by the assessee in the opening stock as well as the closing stock.

4.3.3 Therefore, considering the facts and circumstances of the case, It is seen that when the books of accounts maintained in the regular course of business and stand accepted by the Assessing Officer, then there is no justification for the A.O. to invoke the provisions of section 68 of the Act to make an addition of Rs.2,39,00,000/- in the hands of the assessee firm. It is further seen that once the sales, purchases as well as stocks and the trading results declared by the assessee firm are accepted by the Assessing Officer on the basis of regularly maintained books of accounts then there is no justification to disbelieve the deposit of cash in the bank accounts which is also fully reflected and recorded in the same books of accounts, more so when no

discrepancy has been pointed out. Reliance for above submissions is placed on following orders of ITAT:

1. SINGHAL EXIM VS ITO
[(ITA. NO. 6520/DEL/2018) (DELHI-ITAT);
2. PAWAN KUMAR R MODI VS ITO
[(ITA NO2345/MUM/2014 (MUMBAI-ITAT)]

It has been held in both the cases that provisions of Section 68 are not applicable where cash deposit is found recorded in books of account and the source and nature is verifiable from such books of accounts.

The Hon'ble ITAT, New Delhi in the case of Agson Global Pvt. Ltd. in ITA No3741 and many others/Del/2019 vide their order dated 31,10.2019 has examined this issue and detail and has decided the issue in favour of appellant

Therefore, considering the facts and circumstances of the case and the judicial position discussed above, the action of the AO is not tenable and accordingly the addition of Rs.2,39,00,000/- made by the Assessing Officer is hereby **deleted.**"

10. On reading of the order of the ld. CIT (Appeals) and the observations therein we find that the ld. CIT (Appeals) deleted the addition on the ground that the assessee is maintaining regular books of accounts and the same were audited. The assessee furnished complete books of accounts including the cash book, ledger account, sale account, purchase account, stock registers etc. before the Assessing Officer in the course of assessment proceedings and there was no adverse comments by the Assessing Officer in respect of the books of accounts maintained by the assessee including the opening stocks and closing stocks. It was also observed by the ld. CIT (Appeals) that

the books of accounts were neither rejected nor any discrepancies were pointed out and, therefore, in the absence of any adverse comments or inferences in the books of accounts, is of the opinion that there is no justification to disbelieve the deposits of cash in the bank accounts. The ld. CIT (Appeals) also observed that out of total deposits made by the assessee into bank accounts only Rs.1,16,50,000/- is in old currency and the balance of Rs.1,47,50,000/- is in new currency and the assessee has explained the sources for the deposits of old currency and the assessee has sufficient sales to explain the cash deposits made into bank account. Therefore, we do not see any infirmity in the order passed by the ld. CIT (Appeals) in deleting the addition made under section 68 of the Act. Thus, we sustain the order of the ld. CIT (Appeals) and reject the grounds of the Revenue.

11. In the result, the appeal of the Revenue is dismissed and the cross objection of the assessee is also dismissed as withdrawn.

Pronounced in the open court on : 13/04/2023.

Sd/-
(G. S. PANNU)
PRESIDENT

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 13/04/2023.

MEHTA

Copy forwarded to :

1. Appellants;

2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	27.03.2023
Date on which the typed draft is placed before the dictating member	27.03.2023
Date on which the typed draft is placed before the other member	13.04.2023
Date on which the approved draft comes to the Sr. PS/ PS	13.04.2023
Date on which the fair order is placed before the dictating member for pronouncement	13.04.2023
Date on which the fair order comes back to the Sr. PS/ PS	13.04.2023
Date on which the final order is uploaded on the website of ITAT	13.04.2023
Date on which the file goes to the Bench Clerk	13.04.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	