

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

ITA No. 1931/DEL/2023 [A.Y 2017-18]

The I.T.O
Ward - 8(1)
New Delhi

Vs.

Enhance Hospitality Pvt Ltd
45-A, Pocket -K, Sheikh Sarai
Phase - 2, New Delhi

PAN: AADCE 4590 R

(Applicant)

(Respondent)

Assessee By : Shri Gaurav Jain, Adv
Shri Vijay Singh, CA

Department By : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 19.10.2023

Date of Pronouncement : 30.10.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order dated 01.05.2023 by the NFAC, Delhi pertaining to Assessment Year 2017-18.

2. The grievances of the Revenue read as under:

1. The Ld. CIT(A) erred in law and on facts of the case in deleting addition of Rs. 82,54,0001 - on account of cash deposits amounting to Rs. 82,54,0001 - during the FY 2016-17 by ignoring the verifications made by the AO as well as the fact that the purchases as well as sales remained unverified.

2. The Ld. CIT(A) erred in law and on facts of the case in addition of Rs. 82,54,0001 - by ignoring the fact that the official the then ITO Ward-8(2) New Delhi was also deputed to see the shops from where purchases were made by the assessee, but shops were not found at the given addresses provided by the assessee in its submission.

3. The Ld. Ld. CIT(A) erred in law and on facts of the case Addition of Rs. 82,54,0001 - by ignoring the fact that assessee shown continuous sales during July-august-September-October 2016, but not a single payment was made to purchasers (from it had made purchases) during July-October 2016 after of sales"

3. Briefly stated the facts of the case are that the assessee filed its return of income on 29.10.2017 electronically declaring loss of Rs. 89,562/- . Return was selected for complete scrutiny through CASS for

abnormal increase in cash deposits during demonetization period. Statutory notices were issued and served upon the assessee through ITBA Portal.

4. The assessee was asked to explain the deposits of cash during the demonetization period.

5. The assessee filed a detailed which was dismissed by the Assessing Officer who was of the opinion that cash deposits in the bank in the immediately preceding F.Y. 2015-16 were NIL. Cash deposited during pre demonetization period was also NIL. But during the demonetization period, the assessee made cash deposit of Rs. 88.54 lakhs.

6. Explanation of the assessee that cash deposited during the demonetization period were from cash sales was also dismissed by the Assessing Officer. The Assessing Officer further examined the purchases and found purchases from 4 parties bogus and finally concluded by

making addition of Rs. 82.54 lakhs as unexplained cash deposit in the SBN u/s 69A of the Income-tax Act, 1961 [the Act, for short].

7. Addition was challenged before the Id. CIT(A) and the explanations were reiterated.

8. After considering the facts and submissions, the Id. CIT(A) found contradiction in the findings of the Assessing Officer. The Id. CIT(A) observed that on one hand the Assessing Officer has stated that sales could not be verified for want of evidence and on the other hand, the Assessing Officer has observed that the assessee has show cash sales only to justify the huge amount of cash deposit during the demonetization period. The Id. CIT(A) found that sales are properly recorded in the books of account and evidences are available with the assessee.

9. It was further noted that the total sales of Rs. 1.23 crores which have been made in cash has not been doubted by the Assessing Officer but he has only questioned the source of 82.54 lakhs. Contradicting

himself, the Assessing Officer has accepted the cash deposited during the demonetization period of Rs. 88.54 lakhs.

10. The Id. CIT(A) was not inclined to accept the pick and choose formula adopted by the Assessing Officer. While accepting the contentions of the assessee, the Id. CIT(A) observed that sales made by the assessee has been duly recorded in the books and no fault has been found in the books of account maintained by the assessee.

11. The Id. CIT(A) further found that though the Assessing Officer has doubted the purchases from 4 parties, but has accepted the payments made to them through banking channel.

12. The Id. CIT(A) concluded as under:

"I find that the submission of the appellant is heavily weigh in its favour and accordingly, considering all the facts, evidence, case laws relied upon by the appellant, I am satisfied that h no

addition could be made in such arbitrary manner without rejecting the books of accounts u/s 145 of the Act."

13. Addition was deleted.

14. Before us, the ld. DR strongly supported the findings of the Assessing Officer and read the operative part.

15. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

16. We have carefully perused the orders of the authorities below. Cash deposit during the demonetization period can be understood from the following chart:

HDFC Bank Ltd
08/11 - 30/12

Date	Denomination	Nos	Total	Amt Dep.
12-11-16	500		-	
	1000	2000	2000000	
	100		-	2000000
13-11-16	500	2000	1000000	
	1000	2000	2000000	
	100		-	3000000
23-11-16	500	400	200000	
	1000	700	700000	
	100		-	900000
01-12-16	500	18	9000	
	1000	300	300000	
	100		-	309000
05-12-16	500	703	351500	
	1000	178	178000	
	100	2929	292900	
	50	142	7100	829500
15-12-16	500		-	
	1000	1	1000	
	100		-	
	50		-	1000
15-12-16	500		-	
	1000		-	
	100	2900	290000	
	50	200	10000	300000
22-12-16	500	400	200000	
	1000	500	500000	
	100		-	
	50		-	700000
26-12-16	500	429	214500	
	1000	600	600000	
	100		-	
	50		-	814500
				8854000

<u>8/11 - 31/12</u>	Denomination	Nos	Total		
	500	3950	1975000		
	1000	6279	6279000		8254000
	100	5829	582900		
	50	342	17100	8854000	600000
				*	8854000

17. Cash deposit post demonetization period is as under:

Canara Bank
Post Demonitisation

Date	Denomination	Nos	Total	Amt Deposited	FY 16 17	FY 17 18
04-01-17	2000	120	240000			
	500					
	100			240000		
16-01-17	2000					
	500	800	400000			
	100	320	32000	432000		
30-01-17	2000	196	392000			
	500					
	100	10	1000	393000		
30-01-17	2000	100	200000			
	500	400	200000			
	100	170	17000	417000	1482000	
15-04-17	2000	48	96000			
	500					
	100			96000		
14-08-17	2000	125	250000			
	500					
	100			250000		
14-08-17	2000	150	300000			
	500	100	50000			
	100			350000		
17-01-18	2000					
	500	200	100000			
	100			100000		
15-03-18	2000	100	200000			
	500					
	100			200000		
19-03-18	2000	50	100000			
	500	200	100000			
	100			200000		
19-03-18	2000					
	500	120	60000			

Denomination	Nos	Total
2000	889	1778000
500	1820	910000
100	900	90000
Total		2778000

18. From the above chart, it can be seen that during the demonetization period, the assessee has also deposited cash in currency denomination of Rs. 100/- and Rs. 50/- also. The allegation that the assessee has deposited cash during the demonetization period only does not make any logical sense because once the specified currency of denomination Rs. 1000/- & 500/- has been declared to be illegal tender, then no prudent person would keep the currency at home. Therefore, these SBN were deposited in the bank account as directed by the Government.

19. All that has to be seen is whether cash has been generated from legal sources and in the case in hand cash has been generated through sales made by the assessee, duly recorded in its regular books of account, which has been accepted by the Assessing Officer. No fault has been pointed out. The allegation that the purchases from 4 parties are bogus also do not stand, in as much as, payments have been made through

banking channel and payments have been accepted by the Assessing Officer.

20. A careful perusal of the assessment order shows that the Assessing Officer has been carried away with cash deposit ignoring the fact that a business man was left with no choice but to deposit SBN in the bank account as the same has been demonetized and declared illegal tender. Considering the facts of the case in totality, we do not find any reason to interfere with the findings of the ld. CIT(A).

21. In the result, the appeal of the Revenue in ITA No. 1931/DEL/2023 is dismissed.

The order is pronounced in the open court on 30.10.2023 in the presence of both the representatives.

Sd/-

[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 30th OCTOBER, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,

ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	
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