

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 2034/Del/2021 : Asstt. Year: 2017-18

DCIT, Central Circle-06, New Delhi-110055 (APPELLANT)	Vs	KAD Housing Pvt. Ltd., 151, Savita Vihar, New Delhi-110092 (RESPONDENT)
PAN No. AACCK4705B		

**Assessee by : Sh. C. S. Anand, Adv.
Revenue by : Ms. Smita Singh, Sr. DR**

Date of Hearing: 08.11.2023	Date of Pronouncement: 11.01.2024
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-24, New Delhi dated 07.10.2021.

2. The Revenue has raised the following grounds of appeal:

"1. The Id. CIT(A) erred in law and on facts in deleting the addition of Rs.4,03,95,261/- made on account of unexplained cash deposited during the demonetization period."

3. The assessee company is managing a Hotel under the name of Radisson Blu Hotel at Ghaziabad and also maintaining a Commercial office complex. The assessee company filed return of income on 14.11.2017 declaring income of Rs. Nil. The assessee company is maintaining regular books of accounts which are duly audited as per Companies Act, 2013 as well as u/s 44AB of the Income Tax Act 1961. The assessee Company

submitted its Audited Balance Sheet and Profit and Loss Account along with Notes to accounts and Tax Audit Report in Form No 3CA with annexure in form No 3CD under section 44AB of the Income Tax Act 1961.

4. The assessee company deposited cash of Rs. 7,07,72,500/- during the demonetization Period. The cash deposit out of the opening cash balance of Rs. 3,03,77,239/- was accepted and balance sum of Rs. 4,03,95,261/- was added to disclosed income u/s 115BBE of the Income Tax Act, 1961 without set off of losses and created a demand of Rs. 2,50,14,937/- after adjusting of tax credit of Rs. 1,25,37,454/-.

5. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the addition made by the AO.

6. Aggrieved, the Revenue filed appeal before the Tribunal.

7. Before us, the Id. DR argued relying on the Assessment Order whereas the Id. AR supported the order of the Id. CIT(A).

8. Heard the arguments of both the parties and perused the material available on record.

9. The comparative figures for increase in business year wise considering the year 2014 as base line as follows:

Particulars	2013-14	2014-15	2015-16	2016-17	2017-18
Total Sale	356685450	419949862	521992168	726283954	827709207
Cash Sale	134998942	112214854	143043401	269989615	146969567
Other Sale	221686508	307735008	378948767	456294339	680739640
% of Cash Sale	38%	27%	27%	37%	18%
Sale Growth		18%	24%	39%	14%

10. The Assessing Officer allowed benefit of opening cash balance of Rs. 3,03,77,239/- and added back balance amount of Rs. 4,03,95,261/- in view of following reasons:

- There was substantial amount of increase in cash deposit during F.Y. 2016-17 when compared with cash deposited in F.Y. 2015-16.
- The assessee had not filed any corroborative evidence to justify the source of cash deposit.
- It was observed that most of the bills were less than Rs. 50,000/- which indicate that assessee was using colourable device to camouflage the source of cash.

11. The assessee is in the business of Hotel Industry, in their model of business most of the revenue is generated from Food and Beverages (F&B) and almost 70.53% of the total revenue of year in consideration i.e. A.Y. 2017-18 and Room revenue & other minor operated departments constituted 29.45% of total revenue of A.Y. 2017-18. Further, most of the revenue in F&B segment is in the form of cash sales of smaller amounts as given below:

Hotel Revenue	AY 2017-18	AY 2016-17	AY 2015-16	AY 2014-15
Food, beverages sales	512,270,351	354,769,521	274,160,420	220,738,414
Room revenue & Other minor operating revenues	214,013,603	167,222,647	145,789,441	135,947,037
	726.283.954	521.992.168	419.949.862	356.685,450
Total Revenue	726,283,954	521,992,168	419,949,862	356,685,450
Food, beverages & others	512,270,351	354,769,521	274,160,420	220738413.6
F&B sale % of Total Revenue	70.53%	67.96%	65.28%	61.89%

12. It is a fact on record that the assessee company capitalized a sum of Rs. 46,40,43,078/- on 01.01.2016 corresponding to Assessment Year 2016-17 which is duly recorded in the audited books of accounts wherein the existing Hotel facilities were increased by 02 additional banquets, 02 additional restaurant and 03 additional meeting rooms (New Venues) in the hotel premises. This can be said to have increased in the revenues on account of food & beverages which are retailed and sold in cash on day to day basis. The increase in the capacity of the assessee during the year is as under:

S. No	Particulars	Before Capitalization (Pax)	After Capitalization (Pax)
1	Banquets	1000 (Maximum Capacity)	2500(Maximum capacity)
2	Restaurants	186	364
3	03 Meeting Rooms	0	90 (Max Capacity)

13. During the A.Y. 2014-15, percentage of cash sales was 37.82% of total sale while during the A.Y. 2017-18 percentage of cash sales was 37.16% of total sales. The same AO accepted figure of 38% for A.Y. 2014-15. There has been increase of 15% in growth rate of total sales of the assessee company. Growth rate of total sale increased from 24% in A.Y. 2016-17 to 39% in AY 2017-18 and increase in growth rate of total sale is more than the growth rate in cash component of sale which showed an increase of just 10% from A.Y. 2016-17 to A.Y. 2017-18.

14. There was increase in turnover during the period 01.04.2016 to 08.11.2016 (Pre-demonetization period) in comparison to the corresponding period of previous year i.e. 01.04.2015 to 08.11.2015. Due to increased turnover, majorly

due to New F&B venues, there was increase in cash sales and corresponding cash deposits during the period 01.04.2016 to 08.11.2016 as compared to the corresponding period in last F.Y. i.e. 01.04.2015 to 08.11.2015. The total cash deposits for the relevant period is as under:

S. No.	Particulars	Amount (In Cr.)
1.	a. Total cash deposit in AY 2016-17	14.93
	b. Total cash deposit in Bank between 01/04/15-08/11/15	8.41
	c. Total cash deposit in Bank between 09/11/2015-31/12/2015	5.12
2.	a. Total cash deposit in AY 2017-18	18.19
	b. Total cash deposit in Bank between 01/04/16-08/11/16	9.40
	c. Total SBN deposit in Bank between 09/11/2016-31/12/2016	7.00
3.	Percentage of cash deposit 1 (b) in comparison of total deposit 1 (a)	56.32%
	Percentage of cash deposit 2(b) in comparison of total deposit 2 (a)	51.67%
4.	Percentage of cash deposit 1(c) in comparison of total deposit I (a)	34.29%
	Percentage of cash deposit 2(c) in comparison of total deposit 2 (a)	38.48%

15. From the above, it can be found that the cash deposit during pre-demonetization period between 1st April to 8th November to total cash deposits was 51.67% in A.Y. 2017-18 which was 56.32% in A.Y. 2016-17. These figures are comparable. Also percentage cash deposits during demonetization period (between 09.11.2016-31.12.2016) to total cash deposit was 38.48% which was 34.29% for corresponding period of AY 2016-17. Similarly, cash sale as percentage of total sale during both the years has been evenly spread out even during pre-demonetization months and is consistent and comparable on year on year basis as follows:

S. NO	Particulars	Amount (In Crores)
1.	a. Total cash sales in AY 2016-17	14.30
	b. Total cash sales between 01/04/15-08/11/15	, 8.41
2.	a. Total cash sales in AY 2017-18	26.99
	b. Total cash sales between 01/04/16-08/11/16	16.15
3.	Percentage of cash sales 1(b) in comparison of 1(a)	58.81%
	Percentage of cash sales 2(b) in comparison of 2(a)	59.83%

16. Sales below Rs 50000/- were examined and accepted in to without any adverse remarks, the closing balance of cash of Rs. 3,03,77,239/- as on 31.03.2016 has been accepted by the AO.

17. Month wise cash sale and cash deposit from 01.04.2016 to 08.11.2016 are given below:

Month	Op. Cash in hand	Cash Sales	Other recpt.	Cash deposit in Bank	Cash withdrawal	Petty Cash Exp	Closing Cash in Hand
Apr-16	30,377,239	16,699,245	3,600	13,293,237	1,100,000	1,726,431	33,160,416
May-16	33,160,416	11,054,772	100	15,058,020	900,000	878,203	29,179,065
Jun-16	29,179,065	38,129,158	-	12,734,211	2,025,000	829,448	55,769,564
Jul-16	55,769,564	26,079,188	6,120	20,537,335	1,600,000	1,123,761	61,793,777
Aug-16	62,793,777	32,983,728	2,087,627	10,920,270	1,300,000	1,056,394	87,188,468
Sep-16	87,388,468	27,174,115	21,854	8,875,240	1,250,000	979,243	105,979,953
Oct-16	104,979,953	6,984,802	8,425	6,992,955	1,510,000	1,513,680	104,976,545
Nov till 8/11/16	104,776,545	3,445,575	-	5,641,420	100,000	317,968	102,362,732

18. The assessee had sufficient cash in hand much before demonetization was announced and there was decrease in cash sales during demonetization period as given below:

Particulars	AY 2016-17 (In Rs.)	AY 2017-18 (In Rs.)	Closing cash balance AY 2017-18 (In Rs.)
April	95,55,468/-	1,62,61,650/-	3,31,60,416/-
May	1,23,27,783/-	1,10,39,717/-	2,91,79,064/-
June	79,86,566/-	3,80,94,695/-	5,57,69,564/-
July	1,71,01,037/-	2,58,06,384/-	6,17,93,776/-
Aug	76,31,541/-	3,29,34,994/-	8,71,88,467/-
Set	1,59,62,032/-	2,69,50,104/-	10,59,79,953/-
Oct	1,04,09,706/-	69,65,026/-	10,49,76,545/-
Nov	1,24,88,589/-	48,59,922/-	10,23,62,732/-
Dec	1,10,50,954/-	42,23,923/-	74,607,225/-
Jan	1,20,67,345/-	3,69,41,896/-	4,699,394/-
Feb	1,54,39,152/-	3,27,05,452/-	3,64,63,029/-
March	1,10,23,228/-	3,32,05,845/-	6,39,22,703/-
Total Cash Sales	14,30,43,401/-	26,99,89,614/-	88,219,518/-

19. In the backdrop of these facts, we have gone through the order of the Id. CIT(A) which examined the following:

- Assessee filed VAT Returns from April to Sept. 2016 upto 22.10.2016 i.e. before the date of demonetization on 08.11.2016 disclosing substantial cash sales and paying effective VAT amounting to Rs.2.59 Crores. Assessee has not revised its VAT Returns. In the assessment order under VAT dt.31.05.2019 of UP VAT for FY 2016-17, no adverse comments were made.
- Assessee has not revised its Service Tax Returns. In the assessment order under Service Tax dt.19.11.2019, no adverse comments were made.
- Assessee paid total VAT of Rs.6.05 Crores and Service Tax of Rs.6.58 Crores during FY 2016-17 on total turnover of Rs.72.62 Crores which amounts to effective tax rate of 17.40% on its total turnover.
- Cash Sales for Oct.2016 were lower than the Cash Sale for Oct. 2015. Similarly Cash Sales for Nov.2016 were lower than the Cash Sale for Nov.2015.
- Cash sales after demonetization in Jan. to Mar. 2017 were above Rs.3.27 Crores for each month on which assessee has paid VAT and Service Tax. It shows that the assessee was having substantial cash sales even after demonetization.
- It is matter of record that Assessee expanded its existing hotel facilities by 2 additional banquets, to additional restaurant and 3 additional meeting rooms in its hotel from

01.01.2016 which increased its cash sales as well as total sales.

- Percentage of cash sales @ 27.39% in FY 2016-17 is comparable to other years of 37.82% in FY 2014-15, 26.72% in FY 2015-16 and 37.16% in FY 2017-18.
- Assessee maintained books of accounts and got them audited. No discrepancy was pointed out by the AO and the books of account were not rejected.

20. Thus, after going through the entire facts on record and keeping in view, the examination and adjudication of the Id. CIT(A) which consists the following points validly, we decline to interfere with the order of the Id. CIT(A).

21. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 11/01/2024.

Sd/-
(Yogesh Kumar US)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Dated: 11/01/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR