

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

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. Naveen Chandra, Accountant Member**

ITA No. 3555/Del/2025 : Asstt. Year : 2017-18

ACIT, Circle-60(1) New Delhi-110002	Vs	Kavinder, Shop No. 12 & 46, The Galleria DLF, Mayur Vihar, Phase-1, New Delhi-110091
(APPELLANT)		(RESPONDENT)
PAN No. AWPPK3309P		

**Assessee by : Sh. Manoj Garg, CA
Revenue by : Ms. Ankush Kalra, Sr. DR**

Date of Hearing: 12.01.2026	Date of Pronouncement: 12.01.2026
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ORDER

Per Satbeer Singh Godara, Judicial Member:

This Revenue's appeal for Assessment Year 2017-18, arises against the CIT(A)/NFAC, Delhi's DIN & order No. ITBA/NFAC/S/250/2024-25/1075187371(1) dated 28.03.2025, in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties at length. Case file perused.
3. The Revenue's sole substantive ground pleaded in the instant appeal challenges correctness of the CIT(A)/NFAC's action reversing the assessment findings dated 22.12.2019 treating the assessee's entire cash deposits of Rs.4.72 crores as unexplained, vide following detailed discussion:

"6.2. Ground of Appeal No. 2&3 are regarding cash deposit and taken together.

6.2.1. AO has taken entire cash deposit of Rs 4.72 crores as unexplained money credited in its bank account u/s 69A of the Act. The deposits are in 3 bank accounts namely 2 PNB accounts and 1 HDFC account. AO passed the order u/s 143(3) of the Act as mentioned in the table of the assessment order.

6.2.2. Appellant submitted that it had changed the counsel during Financial Year 2018-19, which resulted in miscommunication of electronic notices, therefore the appellant could not submit the required reply before AO. Appellant submitted that AO has passed the best judgement assessment order on 22.12.2019 i.e. on the same day on which the reply to show cause notice to be made and hence the assessment is bad relying on the case of Hon'ble Madras High Court in the case of S. Velu Palandar vs. Deputy Commercial Tax Officer 1971 (8) TMI 42 – wherein Hon'ble Court held that it was incumbent upon an officer to wait till the end of the working day when the matter was posted to finalize proceedings.

6.2.3. Appellant submitted that it is engaged in the business of retail selling of liquor. It submitted a copy of licence issued by Govt of NCT Delhi. It had filed its ITR on 31.03.2018 and also audited financial statement and tax audit report in form 3CB and 3CD e -filed on 29.03.2018. Appellant submitted that it had deposited a sum of Rs. 3,65,45,900/- in cash during demonetisation period from 09.11.2016 to 31.12.2016 into his bank accounts and not Rs 4.72 crores as noted by AO. Appellant submitted the cash deposits were part of its regular sale which is reflected in the books of accounts maintained and audited by an auditor. It submitted copy of financial statement (page – 55 to 58) as part of paper book. Appellant submitted that no adverse comment have been made by the auditor in his report regarding books of accounts and he has examined cash book, bank book, journal, purchase book, sale book and others. Appellant submitted copy of tax audit report in form 3CB and 3CD (page 45 to 54). Appellant submitted that AO had himself accepted the books of accounts of appellant on the basis of tax audit report which is part of assessment record. Hon'ble ITAT Kolkata in case of DEBRAJ SAHOO VERSUS DCIT, CIR.-44, KOLKATA (2024 (8) TMI 548 - ITAT KOLKATA)(I. T. A. No. : 276/KOL/2024) held that merely due to the contravention of the notification issued by RBI does not mean that the amount collected by the appellant against sales and duly recorded in the books of accounts treated as unexplained cash credit of the

appellant. Relying on same the details submitted by the appellant is analyzed below.

6.2.4. Appellant also submitted cash sales of liquor for the Financial years 2014-15, 2015-16 and 2016-17 to show that appellant consistently sold the liquor in cash and there is no abnormal jump in cash sales during demonetization year. The same is tabulated below:

<i>Financial year</i>	<i>cash sales of liquor(Amount)</i>
<i>2014-15</i>	<i>Rs. 20,75,32,227/-</i>
<i>2015-16</i>	<i>Rs. 26,66,06,607/-</i>
<i>2016-17</i>	<i>Rs. 21,79,22,411/-</i>

Thus from above data it is seen that cash sales have decreased in AY 17-18 compared to AYs 15-16 but have increased in comparison to 16-17. Appellant also submitted cash flow statement for the FY 2014-15, 2015-16 and 2016 17. From the cash flow statement the cash deposits in FY 2014-15, 2015-16 and 2016 17 are tabulated below:

<i>Financial year</i>	<i>cash deposits(Amount)</i>
<i>2014-15</i>	<i>Rs. 22,81,29,027/-</i>
<i>2015-16</i>	<i>Rs. 23,20,87,770/-</i>
<i>2016-17</i>	<i>Rs. 16,66,53,130/-</i>

Thus it is seen that the deposits of cash is in range of around Rs 20 crores which is far exceeding the deposits of Rs 4.72 crores made by the AO. In fact the deposits during AY 17-18 is less than cash deposits made in AYs 15-16 & 16-17. Besides comparing the cash deposits for entire FY, appellant had also compared the cash deposits during the demonetization period in AY 17-18 and same corresponding period in AYs 15-16 & 16-17. The same is tabulated below:

<i>Period</i>	<i>cash deposits(Amount)</i>
<i>09-11-2014 to 31-12-2014</i>	<i>Rs. 3,04,13,650/-</i>
<i>09-11-2015 to 31-12-2015</i>	<i>Rs. 2,06,53,900/-</i>
<i>09-11-2016 to 31-12-2016</i>	<i>Rs. 3,65,45,900/-</i>

Thus it is not that appellant has not been depositing cash in earlier FYs. Considering the facts that appellant is in a regular business of liquor, that it has filed the audited report before department, that it had been showing sales in cash in same range, that it has been showing deposits of cash in same range, that it has been showing cash deposit during period Nov to Dec also same for 3 FYs the addition is deleted. This ground of appeal is allowed."

3.1 This is what leaves the Revenue aggrieved.

4. Both the parties vehemently reiterate their respective stands against and in support of correctness of the CIT(A)'s foregoing detailed discussion treating the assessee's entire cash deposits in issue as duly explained. Learned counsel more particularly seeks to refer to the assessee's detailed paper book to buttress the point that he is engaged in liquor sale business after obtaining due licence from the Government of NCT, Delhi. And that the impugned cash deposits only represent his cash sales in the very business which have been duly accounted for as per the CIT(A)'s detailed discussion.

5. That being the case, the Revenue could hardly dispute that apart from best judgment assessment u/s 144 of the Act, there are no specific defects pinpointed in the relevant books of account claiming the assessee's cash deposits herein as part of the regular turnover in liquor sale business. The fact also remains that the assessee could not get the entire facts in issue reconciled and verified before the Assessing Officer to this effect. Be that as it may, we are of the considered view in this factual backdrop that a lump sum addition of Rs.10,00,000/- only would cover the assessee's all shortfalls with a rider that the same shall not be treated as a precedent. Necessary computation shall follow as per law.

6. So far as the assessee's assessment under Section 115BBE is concerned, we quote S.M.I.L.E Microfinance Limited Vs. The ACIT CC-1 in W.P.(MD) No.2078 of 2020 & W.M.P. (MD) No. 1742 of 2020 held that the said provision applied for transactions done on or after 01.04.2017 only. The assessee is accordingly directed to be assessed under normal provisions only.

7. This Revenue's appeal is partly allowed.

Order Pronounced in the Open Court on 12/01/2026.

Sd/-

(Naveen Chandra)
Accountant Member

Dated: 12/01/2026

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Satbeer Singh Godara)
Judicial Member

ASSISTANT REGISTRAR