

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

| <b>Appeal No.</b>                                | <b>Appellant</b>  | <b>Respondent</b>  | <b>Assessment Year</b>                       |
|--|---|--|--|
| ITA No.<br>1550/Bang/2025                        | M/s. Hotel Malabar Regency,<br>I-T-16/2(37) & 38, Nanthoor<br>Road, Near Pumpwell Circle,<br>Mangalore – 575 002.<br><b>PAN: AAIFH0297E</b> | The Deputy<br>Commissioner<br>of Income Tax,<br>Central Circle –<br>2,<br>Mangalore. | 2017-18                                      |
| ITA No.<br>1577/Bang/2025                        |   |  | 2019-20                                      |
| ITA No.<br>1578/Bang/2025                        |   |  | 2020-21                                      |
| ITA Nos. 1579,<br>1580, 1581 &<br>1599/Bang/2025 | M/s. Kairali Bhavan Restaurant,<br>No. B 13 N G Road, Attavar,<br>Mangalore – 575 001.<br><b>PAN: AAIFK3235D</b>                            |  | 2017-18,<br>2019-20,<br>2020-21 &<br>2018-19 |
| ITA Nos. 1573 to<br>1576/Bang/2025               | M/s. Hotel Residency Park,<br>18-2-57/31,<br>Mangalore Masjid Road,<br>Hampankatta,<br>Mangaluru – 575 001.<br><b>PAN: AACFH1872R</b>       |  | 2017-18 to<br>2020-21                        |
| ITA Nos. 1582 to<br>1584/Bang/2025               | M/s. Kairali Adukkala,<br>G4, Balmatta Road,<br>Hampankatta,<br>Dakshina Kannada,<br>Mangaluru – 575 001.<br><b>PAN: AAOFK4771A</b>         |  | 2018-19 to<br>2020-21                        |

|             |   |                              |
|-------------|---|------------------------------|
| Assessee by | : | Shri V. Srinivasan, Advocate |
| Revenue by  | : | Shri Balusamy N, JCIT-DR     |

|                       |   |            |
|-----------------------|---|------------|
| Date of Hearing       | : | 16-10-2025 |
| Date of Pronouncement | : | 12-01-2026 |

**ORDER****PER BENCH**

These are the group of appeals filed by four different assessees against the separate orders of Ld.CIT(A)-2, Panaji. The details of orders against which these appeals filed are as follows:

| S.No. | Appeal No.             | Name of Assessee               | Date of CIT(A) order | Assessment Year |
|-------|------------------------|--------------------------------|----------------------|-----------------|
| 1.    | ITA No. 1550/Bang/2025 | M/s. Hotel Malabar Regency     | 19/05/2025           | 2017-18         |
| 2.    | ITA No. 1577/Bang/2025 |                                |                      | 2019-20         |
| 3.    | ITA No. 1578/Bang/2025 |                                |                      | 2020-21         |
| 4.    | ITA No. 1579/Bang/2025 | M/s. Kairali Bhavan Restaurant | 19/05/2025           | 2017-18         |
| 5.    | ITA No. 1580/Bang/2025 |                                |                      | 2019-20         |
| 6.    | ITA No. 1581/Bang/2025 |                                |                      | 2020-21         |
| 7.    | ITA No. 1599/Bang/2025 |                                |                      | 2018-19         |
| 8.    | ITA No. 1573/Bang/2025 | M/s. Hotel Residency Park      | 12/06/2025           | 2017-18         |
| 9.    | ITA No. 1574/Bang/2025 |                                | 12/06/2025           | 2018-19         |
| 10.   | ITA No. 1575/Bang/2025 |                                | 19/05/2025           | 2019-20         |
| 11.   | ITA No. 1576/Bang/2025 |                                | 19/05/2025           | 2020-21         |
| 12.   | ITA No. 1582/Bang/2025 | M/s. Kairali Adukkala          | 19/05/2025           | 2018-19         |
| 13.   | ITA No. 1583/Bang/2025 |                                |                      | 2019-20         |
| 14.   | ITA No. 1584/Bang/2025 |                                |                      | 2020-21         |

**2.** The appeals are heard together since the assessments were made based on the survey conducted on 24/02/2020.

**M/s. Hotel Malabar Regency**

**3.** The three appeals in respect of Hotel Malabar Regency, Mangalore are taken up for hearing together and disposed of by way of this common order since the issues are common and based on the survey conducted on 24/02/2020. We will take up the appeal in ITA No. 1550/Bang/2025 in respect of the A.Y. 2017-18 as the lead case and the decision arrived by us mutatis mutandis apply to the other two appeals of the assessee viz., Hotel Malabar Regency in ITA Nos. 1577 & 1578/Bang/2025.

**4.** The grounds raised by the assessee in ITA No. 1550/Bang/2025 is extracted as below.

**ITA No. 1550/Bang/2025**

*“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*3. The learned CIT[A] is not justified in upholding the addition of Rs. 11,43,615/- by adopting 44% as the gross profit rate on the alleged unaccounted turnover of Rs. 25,99,124/- under the facts and in the circumstances of the appellant's case.*

*3.1 The learned CIT[A] failed to appreciate that the addition was made on the basis of suspicion and surmise, assumptions and presumptions without bringing corroborative material on record and no reliance could be placed upon the software data/loose sheets found in course of survey under the facts and in the circumstances of the appellants case.*

*4. The learned CIT[A] has erred by upholding additions against the assessee made on the basis of a piece of paper, loose sheets found during the course of search wherein certain figures were written but nothing was ascertained..*

*5. The learned CIT[A] ought to have appreciated that the survey proceedings could not unearth any assets/investment/expenditures made out of alleged concealed income.*

*6. The learned CIT[A] is not justified in completing the assessments for AY 2017-18, despite the absence of supporting evidence. Loose sheets based on which the addition was made pertains to AY 2020-21.*

*7. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-B and 234-C of the Act, under the facts and in the circumstances of the appellant's case.*

*8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”*

**M/s. Kairali Bhavan Restaurant**

5. The four appeals in respect of M/s. Kairali Bhavan Restaurant, Mangalore are taken up for hearing together and disposed of by way of this common order since the issues are common and based on the survey conducted on 24/02/2020. We will take up the appeal in ITA No. 1579/Bang/2025 in respect of the A.Y. 2017-18 as the lead case and the decision arrived by us mutatis mutandis apply to the other three appeals of the assessee viz., M/s. Kairali Bhavan Restaurant in ITA Nos. 1580, 1581 & 1599/Bang/2025.

6. The grounds raised by the assessee in ITA No. 1579/Bang/2025 is extracted as below.

**ITA No. 1579/Bang/2025**

*“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2. The learned CIT[A] is not justified in upholding the addition of Rs. 34,33,280/-by adopting 48% as the gross profit rate on the alleged unaccounted turnover of Rs. 71,76,589/- under the facts and in the circumstances of the appellant's case.*

*3. The learned CIT[A] failed to appreciate that the addition was made on the basis of suspicion and surmise, assumptions and presumptions without bringing corroborative material on record and no reliance could be placed upon the software data/loose sheets found in course of survey under the facts and in the circumstances of the appellant's case.*

*4. The learned CIT[A] has erred by upholding additions against the assessee made on the basis of a piece of paper, loose sheets found during the course of search wherein certain figures were written but nothing was ascertained..*

*5. The learned CIT[A] ought to have appreciated that the survey proceedings could not unearth any assets/investment/expenditures made out of alleged concealed income.*

6. *The learned CIT[A] is not justified in completing the assessments for AY 2017-18, despite the absence of supporting evidence. Loose sheets based on which the addition was made pertains to AY 2020-21.*

7. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-B and 234-C of the Act, under the facts and in the circumstances of the appellant's case.*

8. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

### **M/s. Hotel Residency Park**

7. The four appeals in respect of M/s. Hotel Residency Park, Mangaluru are taken up for hearing together and disposed of by way of this common order since the issues are common and based on the survey conducted on 24/02/2020. We will take up the appeal in ITA No. 1573/Bang/2025 in respect of the A.Y. 2017-18 as the lead case and the decision arrived by us mutatis mutandis apply to the other three appeals of the assessee viz., M/s. Hotel Residency Park in ITA Nos. 1574 to 1576/Bang/2025.

8. The grounds raised by the assessee in ITA No. 1573/Bang/2025 is extracted as below.

### **ITA No. 1573/Bang/2025**

*"1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2. The learned CIT[A] is not justified in upholding the addition of Rs. 32,31,175/- by adopting 31% as the gross profit rate on the alleged unaccounted turnover of Rs. 1,04,23,146/- under the facts and in the circumstances of the appellant's case. Further, the learned CIT[A] erred in confirming the addition and directing the AO to re-compute the addition by applying a gross profit ratio of 52.32%, as this was not warranted under the facts and circumstances of the case .*

3. The learned CIT[A] failed to appreciate that the addition was made on the basis of suspicion and surmise, assumptions and presumptions without bringing corroborative material on record and no reliance could be placed upon the software data/loose sheets found in course of survey under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] has erred by upholding additions against the assessee made on the basis of a piece of paper, loose sheets found during the course of search wherein certain figures were written but nothing was ascertained..

5. The learned CIT[A] ought to have appreciated that the survey proceedings could not unearth any assets/investment/expenditures made out of alleged concealed income.

6. The learned CIT[A] is not justified in completing the assessments for AY 2017-18, despite the absence of supporting evidence. Loose sheets based on which the addition was made pertains to AY 2020-21.

7. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-B and 234-C of the Act, under the facts and in the circumstances of the appellant's case.

8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

### **M/s. Kairali Adukkala**

9. The three appeals in respect of M/s. Kairali Adukkala, Mangaluru are taken up for hearing together and disposed of by way of this common order since the issues are common and based on the survey conducted on 24/02/2020. We will take up the appeal in ITA No. 1582/Bang/2025 in respect of the A.Y. 2018-19 as the lead case and the decision arrived by us mutatis mutandis apply to the other two appeals of the assessee viz., M/s. Kairali Adukkala in ITA Nos. 1583 & 1584/Bang/2025.

10. The grounds raised by the assessee in ITA No. 1582/Bang/2025 is extracted as below.

**ITA No. 1582/Bang/2025**

*“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

*2. The learned CIT[A] is not justified in upholding the addition of Rs. 27,32,482/-by adopting 40% as the gross profit rate on the alleged unaccounted turnover of Rs. 68,31,204/- under the facts and in the circumstances of the appellant’s case.*

*3. The learned CIT[A] failed to appreciate that the addition was made on the basis of suspicion and surmise, assumptions and presumptions without bringing corroborative material on record and no reliance could be placed upon the software data/loose sheets found in course of survey under the facts and in the circumstances of the appellant’s case.*

*4. The learned CIT[A] has erred by upholding additions against the assessee made on the basis of a piece of paper, loose sheets found during the course of search wherein certain figures were written but nothing was ascertained..*

*5. The learned CIT[A] ought to have appreciated that the survey proceedings could not unearth any assets/investment/expenditures made out of alleged concealed income.*

*6. The learned CIT[A] is not justified in completing the assessments for AY 2018-19, despite the absence of supporting evidence. Loose sheets based on which the addition was made pertains to AY 2020-21.*

*7. Without prejudice to the right to seek waiver with the Hon’ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234-B and 234-C of the Act, under the facts and in the circumstances of the appellant’s case.*

*8. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”*

**11.** The facts are similar in all the appeals and therefore the common facts are narrated below:

The assessee is a partnership firm engaged in the business of lodging and restaurant. The assessee filed their return of income on 28/03/2018. Thereafter a survey u/s. 133A was conducted on 24/02/2020. Simultaneously survey u/s. 133A was also conducted at the business premises of the group hotels viz., Hotel Residency Park, Kairali Adukkala, Kairali Bhavan Restaurant and Malabar Kitchen Restaurant. At the time of survey, the authorities have recorded a statement from the Manager of the assessee Shri Irfan Ismail, who is the son of the one of the partner Shri K.P. Ismail. In the said statement, the manager stated that they are using the software "Mensons Hotel Manager". He further stated that the said software is integrated and networked locally in all their computer terminals like cash counter, kitchen house and lodging billing section etc. The manager also stated that the sales figures were modified / reduced in the software in order to show a lesser sales turnover. The manager also stated that the software has a provision to automatically reduce the sales figures on daily basis. He also admitted that he has been doing the modification of the sales figures as per the directions of the partners of the firm.

**12.** In the case of M/s. Kairali Bhavan Restaurant, at the time of survey, the authorities have recorded statement from the cashier Mr. Abdul Hameed who has deposed that at the end of each day, the details of the sales and cash collections were handed over to the General Manager Mr. Mohammed. The cashier also deposed that the General Manager Mr. Mohammed is alone entitled to access and modify the KOT data and other details. But the authorities had not recorded any such statement from the said General Manager Mr. Mohammed even though the cashier had deposed that the General Manager alone is entitled to access and modify the KOT data and other details.

**13.** In the case of M/s. Hotel Residency Park, at the time of survey, the authorities had not recorded any statements from the staff of the assessee but only recorded the statement of Shri Vijendra Shetty, the billing software provider.

**14.** In the case of M/s. Kairali Adukkala, at the time of survey, the authorities have recorded a statement from the Manager Mr. Ahmed T K who has deposed that there is a provision to modify the bills.

**15.** Based on the said statements, the authorities had also recorded statement from one Mr. Vijendra Shetty, the billing software provider who has admitted that the software has been developed in such a way that it enables them to modify / reduce the daily sales figures. Subsequently, the partner Mr. K.P. Ismail also gave a statement accepting the above said statements given by the Manager of M/s. Hotel Malabar Regency. The partner also admitted that the original sale bills are not maintained and the same cannot be extracted from the software once the sale figure was modified / reduced.

**16.** Another statement was also recorded from Mr. A.V. Abdul Rahiman, one of the partner of the firm in which he has also accepted the statements given by the partner Shri K.P. Ismail and the modus operandi of reducing the sales amount as against the actual. The partner also admitted that they are not having the cash bills for the expenses incurred for the purpose of conducting the business and also the expenses have not been recorded in the books of accounts. At the time of survey, the assessee was not able to furnish the details of the actual sales made by the firm during the various financial years since the said details were unable to retrieve from the system. At the time of survey, the authorities had found out some alleged incriminating materials in the place of Hotel Malabar Regency and in page 11 of the loose sheets, the authorities had alleged that the actual sales details in respect of the Kairali Restaurant, Kairali Bhavan Restaurant and Kairali Grand were noted. The AO had relied on the statements given by the

partners and alleged that the amount mentioned in the hand written loose sheet is nothing but the actual sales effected during a particular day.

**17.** The AO based on the statement as well as the random analysis of the Kitchen Order Ticket (KOT), had estimated the weekly average sales made in a month and based on that, the sales made during the entire FY was estimated. The AO has taken the sales made as per the KOT and the sales declared by the assessee in the original return filed and treated the difference as the undisclosed turnover. The AO had solely relied on the multiple statements given by the partners, manager and the software provider to estimate the undisclosed sales turnover and on that basis, the income of the year has been arrived by adopting the gross profit rate as declared by the assessee in their return of income. The AO had not accepted the plea of the assessee that the income should be estimated based on the net profit ratio. The assessee also relied on the retraction statement given by one of the partner but the AO had not accepted the said retraction since the same was given after a long period. The AO mainly relied on the statements and also the materials impounded at the time of survey for making such estimations. The AO also relied on the statements in which the partners had admitted the undisclosed sales turnover. As against the said assessment order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) had confirmed the estimated additions made by the AO since the suppression was admitted by the partners of the firm.

**18.** As against the said order, the present appeal has been filed before this Tribunal.

**19.** At the time of hearing, the Ld.AR submitted that the survey was conducted in the place of the assessee and estimations were made based on the statements given by the multiple persons and no incriminating material was recovered at the time of survey and therefore the addition made is not in order. The Ld.AR further submitted that even the materials found out at the time of survey does not indicate any connection between the assessee

and the amounts mentioned in the said loose sheet. The Ld.AR further submitted that the hand written loose sheet in page 11 could not be treated as an incriminating material since the said loose sheet does not show any details of the assessee as well as the other assesseees and therefore submitted that the said hand written sheet is nothing but a dumb document and could not be relied on for the purpose of estimating the income. The Ld.AR further submitted that the estimation of income by the AO by randomly taking the sales figures for one week and based on that weekly average sales made in a month was estimated and finally, the sales made during the whole year was quantified, is not correct. Therefore the Ld.AR submitted that the estimated undisclosed sales turnover is nothing but an imaginary figure and it was not made based on any documents or materials and therefore the same could not be a valid one. The Ld.AR further submitted that the AO had estimated the income on the allegation that the evidence was unearthed during the survey whereas no such evidence was unearthed except the hand written loose sheet at page 11 which also does not exhibit any connection between the assesseees and the entries made in the slips. The Ld.AR further submitted that except the statements given by the various persons, no other evidence was available with the AO for making such estimation. The Ld.AR also submitted that the statements were recorded and the statements were given not voluntarily and therefore without any corroborative evidence, the statements cannot be relied on for making such additions. The Ld.AR further submitted that one of the partner Shri K.P. Ismail has studied upto 4<sup>th</sup> Std. and therefore he cannot be well versed in the software and therefore the statement about the alleged modification made in the sale bills would not be correct. The Ld.AR further submitted that all the statements given by the various persons were not proved by the authorities by producing some corroborative evidence and by producing some sale invoices with value lesser than the KOT even on the date of survey and therefore the entire addition made by the AO could not be sustained. The Ld.AR further submitted that if the AO's estimation is correct, then the authorities could have found out some excess cash on the date of survey but no such allegation was made by the authorities and

therefore the estimation made is not correct. The Ld AR also filed a case law compilation in support of his arguments.

**20.** The Ld.DR submitted that all the persons connected with the business have admitted the suppression of sales turnovers and one of the partner had also admitted the hand written figures noted in page 11 of the documents seized and therefore the AO had correctly estimated the addition. The Ld.DR further submitted that the assessee is not having any documents, in support of the expenses recorded in the books of accounts and also in view of the fact that the actual sales bills were modified in the system, the AO has no other way except to make some estimations and therefore the addition made by the AO is valid in the eye of law and prayed to dismiss the appeal filed by the assessee. The Ld.DR also filed a common written submissions dated 16/10/2025 and prayed to dismiss the appeals.

**21.** We have heard the arguments of both sides and perused the materials available on record.

**22.** We have perused the assessment order in which the AO had mainly relied on the statements given by the manager, the software provider to arrive a conclusion that the assessee had indulged in the practice of showing the lesser sales figures in the system after the sale has been completed. The AO had considered the fact that the sale amount would be the KOT amount and since the original sale invoices were not available or produced, the AO had estimated the addition. Further, the AO had relied on the impounded materials i.e. the exhibit 'A/HRP/3' which contains loose sheets of page nos. 8,9,10 & 11 which are extracted below.



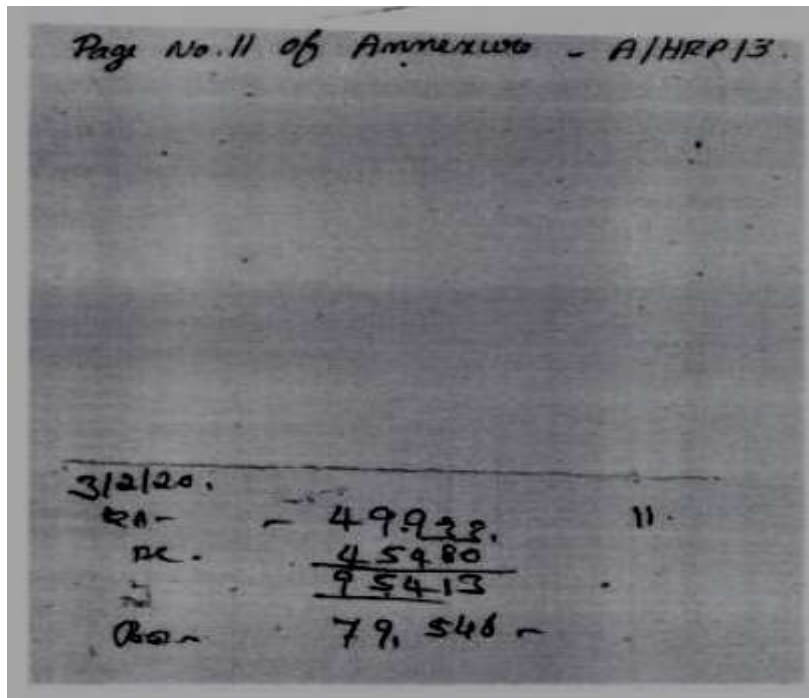
Page No. 9 of Annexure - A/HRP/3.

9

| KATOLI BIRMANI, HAWALDIE<br>DETAILED SALES SUMMARY<br>Date: Sunday 13-Feb-2020 |            |
|--|------------|
| <b>Sales Summary</b>   |            |
| <b>Sales Details</b>   | Rs         |
| Sales  | 23,932     |
| Discount   | 0          |
| Net Sales  | 23,932     |
| <b>Cashier Details</b>   |            |
| Cash   | 23,881.00  |
| Credit Card  | 51.00      |
| Indebted Bills   | 0          |
| Pay Out  | 3.00       |
| Pay In   | -5.00      |
| Cash in Drawer   | 23,881.00  |
| <b>*** Prepaid Card Details ***</b>  |            |
| Hall   | Rs (1)     |
| Men Ac   | 15184 (63) |
| 1st Floor  | 3071 (12)  |
| Counter Sale   | 145 (06)   |
| Take Away  | 5824 (23)  |
| Home Delivery  | 0 (00)     |
| Table Parcel   | 0 (00)     |
| Room Service   | 0 (00)     |
| <b>Department</b>  |            |
| Kitchen  | 17016 (71) |
| Pantry   | 265 (00)   |
| Sev  | 775 (03)   |
| North Indian   | 640 (03)   |
| North Indian   | 2478 (02)  |
| Chocolate  | 40 (00)    |
| <b>Category</b>  |            |
| Others   | 181 (00)   |
| Sea Food Specialtie  | 2190 (09)  |
| Fresh Garden Vegetable   | 595 (02)   |
| Fresh Poultry Farm   | 3780 (16)  |
| Indian Bread   | 2246 (09)  |
| Soft Drink   | 515 (02)   |
| Egg Item   | 1233 (05)  |
| Fried Rice and Noodle  | 505 (02)   |
| Biryani & Rice   | 7810 (32)  |
| Fresh Our Clay Oven  | 145 (00)   |
| Milk Grease  | 445 (01)   |
| Hot Beverage   | 2415 (10)  |
| <b>Orders Altered</b>  |            |
| Cancelled  | 25 (212)   |
| No Charge  | 1 (00)     |
| Transferred  | 0          |
| <b>Free Items</b>  |            |
| No Charge Items  | 0          |
| Complimentary  | 0          |
| <b>Bills Altered</b>   |            |
| Discounted   | 3 (18)     |
| Reprinted  | 37 (304)   |
| Modified   | 7 (107)    |
| Void   | 0          |
| Complimentary  | 0          |
| Staff  | 0          |
| <b>Other Values</b>  |            |
| Items Added  | 0          |
| Items Altered  | 1          |
| Last Bill No.  | 11733      |
| No of Bills  | 43         |
| *** End of Report ***  |            |

*Page No. 12 of Accounts - A/19817.*

| SALES        |               | DEBIT        |               |
|--------------|---------------|--------------|---------------|
| Particulars  | Rs            | Particulars  | Rs            |
| <b>SALES</b> |               | <b>DEBIT</b> |               |
| SALES        | 17,430        | Balance b/d  | 1,000         |
| SALES        | 17,430        | SALES        | 17,430        |
| <b>TOTAL</b> | <b>34,860</b> | <b>TOTAL</b> | <b>34,860</b> |
| <b>DEBIT</b> |               |              |               |
| SALES        | 17,430        | SALES        | 17,430        |
| SALES        | 17,430        | SALES        | 17,430        |
| <b>TOTAL</b> | <b>34,860</b> | <b>TOTAL</b> | <b>34,860</b> |
| <b>DEBIT</b> |               |              |               |
| SALES        | 17,430        | SALES        | 17,430        |
| SALES        | 17,430        | SALES        | 17,430        |
| <b>TOTAL</b> | <b>34,860</b> | <b>TOTAL</b> | <b>34,860</b> |
| <b>DEBIT</b> |               |              |               |
| SALES        | 17,430        | SALES        | 17,430        |
| SALES        | 17,430        | SALES        | 17,430        |
| <b>TOTAL</b> | <b>34,860</b> | <b>TOTAL</b> | <b>34,860</b> |



**23.** We have also perused the loose sheets extracted by the AO which relates to the alleged KOT and page no. 11 relates to some noting in it. The AO had mainly relied on page 11 of the material for arriving a conclusion that the assessee had modified the sales figures as stated by the manager and two partners. We have perused the said page no. 11 of the exhibit in which we are not able to find out any details relating to the assessee as well as other assessees. It is a hand written loose sheet and from the said sheet, it could not be concluded that the said amounts are actual sales effected on 03/02/2020.

**24.** The AO had also relied on the fact that the assessee had not maintained the purchase bills and other records in support of the expenditure incurred by them. In fact, the AO had alleged that the assessee had not maintained the books of accounts properly and therefore the AO had taken the sales figure for one week randomly for various months by analysing the KOT and arrived a weekly average sale for a month and thereafter estimated the sales made during the entire year. From the said finding, it is clear that the AO had made only an estimation which is not based on any other materials seized or impounded at the time of survey.

Even the alleged document impounded at the time of survey in page 11, nothing was available to estimate the sales turnover. Further, the impounded materials are only loose sheets and therefore on that basis, no estimation could be made for the whole year. As already stated, we have also perused the page 11 of impugned material which is in handwriting and from that, we could not presume that the figures mentioned in the said loose sheet is the actual sales effected by the assessee as well as other assessees. No details were available in the alleged page 11 of the impounded material and therefore it could not be treated as an incriminating material for confirming the addition made by the AO. At the best, the said page 11 of the impounded material could be termed as a dumb document and therefore it could not be relied on for making any estimation. Further, the loose sheet was impounded at the time of survey in the place of the assessee M/s. Hotel Malabar Regency and therefore the estimation could not be made on other assessees when nothing was found at the time of survey in their place of business.

**25.** Further, we have noted that in respect of the assessee M/s. Kairali Bhavan Restaurant, the statement was recorded from the cashier Mr. Abdul Hameed who has stated that the General Manager Mr. Mohammed have access to KOT data and other details and modify the said details but the statement of the cashier was not supported with the statement of the alleged General Manager Mr. Mohammed.

**26.** In respect of the M/s. Hotel Residency Park, no such statements were recorded from any of the employees but only a statement was recorded from the software provider Shri Vijendra Shetty.

**27.** In respect of the M/s. Kairali Adukkala, we find that the statement of Manager, Mr. Ahmed T K was recorded in which he has stated that there is a provision in the system to modify the bills. But to support the said statements, no other evidences were made available by the authorities except the hand written loose sheet impounded at the time of survey. As

already stated, based on the hand written entries in the loose sheet, we are not able to find out any correlation between the assessee and the entries made in the said loose sheet and therefore the additions are made by the AO without any corroborative evidences.

**28.** We have also considered the statements given by the various persons and we do not find how the statements would support the case of the AO. In fact, all the deponents had given a stereotyped statement by accepting the alleged mischief done by the assessee. The authorities below had also not taken any steps to test the veracity of the statements by feeding the data into the computer and ascertain whether there is a mechanism available in the system for reducing the actual sale value. No such exercise was done by the authorities to strengthen their case. In order to rely on the said statements, some further investigation should have been done by the authorities than merely by relying on the statements given by the persons. The statements would show that the software has been designed in such a way that the actual sale figures would be modified subsequent to the raising of the sale invoices. If it is so, the authorities should have very well verified the said fact at the time of survey by doing some mock KOT as well as the sale invoices. In the present case, nothing was done by the authorities and the authorities had relied on the statements and the documents impounded at the time of survey.

**29.** From the assessment order, we found that the AO had merely estimated the undisclosed sales turnover and on that basis, estimated the undisclosed income. We have also considered the fact that the sale of food items could not be uniform throughout the year and the sales depends upon various factors and therefore the estimation done by the authorities are not in order. We have also considered the fact that the AO had also relied on the admissions given by the partners in which they had admitted the undisclosed sales turnover estimated by the authorities. We do not think that the estimation could be made merely based on the admission statement but it should have some corroborative evidences to confirm the said

additions. Further, the impounded loose sheets are not disclosing anything and also not established any connection between the assessee and the other assesseees and therefore the reliance made by the AO on the said page 11 of the loose sheet is not correct. We do not find that the page 11 of the impounded document also establishes the fact that the same are the actual sales turnover not shown in the accounts.

**30.** We have also considered the common written submissions filed by the Ld.DR in which the revenue had relied on the various statements given by the various persons including the partners. The revenue also submitted that the estimation has been made after analysing the data in the billing software and the difference in the turnover was considered for making the addition. The revenue further submitted that the difference in turnover considered by the AO in the reopened / scrutiny assessment order is not one week data in each month and extrapolated as claimed by the assessee's Ld. Counsel. The revenue also submitted that the assessee had not retracted the statements given by the partners in which they admitted the estimation made by the AO. Therefore, the revenue submitted that the orders of the AO is in order.

**31.** As already discussed in the earlier paragraphs, the AO had estimated the sales turnover based on the analysis of the KOT but in support of the said estimation, no other corroborative evidence was available with the revenue. When there are no evidence available with the revenue, we do not know how the authorities had estimated the sales turnover. Further, as seen from the assessment order, we found that, after analysing the KOT details available, the AO had estimated the weekly sales turnover and on that basis, monthly sales turnover was estimated and finally the entire year's sales turnover was estimated. Further, it is not the case of the AO that the sales turnover has been estimated based on the verification of the each and every KOT details available with the assessee. Further, we could not presume that the sale bills value was reduced based on the KOT details when there is a possibility that the order placed through the KOT could not

have been executed. From the reading of the assessment order intoto, one will find that the authorities had estimated the sales turnover and based on that, income has been estimated and therefore the entire addition was made based on surmise and conjectures and not supported by any other evidences. Even the impounded loose sheet also does not support the case of the revenue since the same is only a dumb document. In such circumstances, we do not think that the common written submissions filed by the revenue would support the case of the revenue.

**32.** We have also perused the judgment of the Hon'ble Supreme Court reported in (2013) 352 ITR 418 in the case of CIT vs. S. Khader Khan Son in which the Hon'ble Supreme Court had confirmed the finding given by the Hon'ble Madras High Court that, in view of the scope and ambit of the materials collected during the course of survey, the action u/s. 133A would not have any evidentiary value and that it could not be said solely on the basis of the statement given by one of the partners of the firm that the disclosed income was assessable as lawful income of the assessee.

**33.** We have also considered the principles laid down by the Hon'ble Supreme Court in the judgement reported in 135 STC 77 in the case of Kathyayini Hotels Pvt. Ltd. vs. Addl. Commissioner of Commercial Taxes & Anr. wherein it was held that best judgment assessment has to be made reasonably and not on surmises.

**34.** Similarly, the Division Bench of the Hon'ble Madras High Court in the judgment reported in 147 STC 111 in the case of State of Tamil Nadu vs. New Kamaliya Hotel held that the estimation for the whole year could not be made based on the sales found out on a single day.

**35.** We have also considered the Division Bench judgment of the Hon'ble Jurisdictional High Court reported in (2024) 469 ITR 197 in the case of DCIT vs. Sunil Kumar Sharma wherein it was held that notice based on the loose paper is contrary to law and therefore the same should be set aside. We

were also informed that the above judgment has been affirmed by the Hon'ble Supreme Court in its judgment reported in (2024) 165 taxmann.com 846. Considering the law laid down by the Hon'ble Supreme Court and the Hon'ble High Courts in the above judgments, we came to the conclusion that the addition could not be made solely on the basis of the statement given at the time of survey and also based on the loose sheet impounded without any corroborative evidence.

**36.** We also find that the assessee's books of accounts were audited and there is no mistake pointed out in the Audit report and also by the authorities in the maintenance of books of accounts and therefore we could presume that the assessee had declared his correct income in the return of income. We find that the Ld.CIT(A) also not decided the issue based on the materials but he simply relied on the order of the AO which in our view is not correct. The Ld.CIT(A) had simply extracted the findings given by the AO and the statements given by the partners and rejected the grounds raised by the assessee which in our opinion is not correct. We, therefore set aside the order of the Ld.CIT(A) as well as the AO and allow all the appeals filed by the respective assessees.

**37.** In the combined result, all the fourteen appeals filed by the respective assessees are allowed.

Order pronounced in the open court on 12<sup>th</sup> January, 2026.

Sd/-  
(WASEEM AHMED)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 12<sup>th</sup> January, 2026.  
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,  
ITAT, Bangalore