

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
INDIA OVEN, INC.,) OTA NO. 220911466
APPELLANT.)
_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Tuesday, March 18, 2025

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:54 a.m. and concluding at 10:58 a.m. on
Tuesday, March 18, 2025, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead:	ALJ NATASHA RALSTON
Panel Members:	ALJ KEITH T. LONG ALJ TERESA A. STANLEY
For the Appellant:	TARLOCHAN S. SAHIWAL MANDEEP KAUR GURDEEP SINGH SUNNY SEHGAL
For the Respondent:	STATE OF CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION NALAN SAMARAWICKREMA CHRISTOPHER BROOKS JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-6 were received into evidence at page 7.)

(Department's Exhibits A-I were received into evidence at page 7.)

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California; Tuesday, March 18, 2025

9:54 a.m.

JUDGE RALSTON: So we are now on the record in the Appeal of India Oven.

This matter is being heard before the Office of Tax Appeals. The OTA Case Number is 220911466. Today's date is Tuesday, March 18th, 2025, and the time is approximately 9:54 a.m.

Today's hearing is being heard by a panel of three Administrative Law Judges. I'm Judge Ralston, and I will be the lead judge. Judge Long and Judge Stanley are the other members of this tax appeals panel.

Judge Stanley is replacing Judge Katagihara, and the parties do not object to the substitution. All three judges will meet after the hearing and produce a written decision as equal participants. Although, as the lead judge I will conduct the hearing, any judge on this panel has the ability to ask questions or otherwise participate to ensure that we have all the information needed to decide this appeal.

I'm going to start with the parties and ask you to please state your name and who you represent for the record.

Starting with Mr. Sahiwal, if you could introduce

1 yourself, and then also have the people that are with you
2 today introduce themselves.

3 MR. SAHIWAL: Judge, my name is Tarlochan Singh
4 Sahiwal. I'm a CPA representing India Oven. Along with
5 me is Mr. Gurdeep Singh, who is the president of the
6 corporation, and his son Sunny Sehgal, who has been
7 assisting his father, because his father is not keeping
8 well for a couple of years. And also I have my assistant
9 Mandeep Kaur with me. We -- so we have four of us here
10 before you, Judge.

11 JUDGE RALSTON: Thank you.

12 And for the Respondent CDTFA, please state your
13 names and who you represent for the record.

14 MR. SAMARAWICKREMA: Yeah. This is Nalan
15 Samarawickrema, hearing representative for CDTFA. Thank
16 you.

17 MR. PARKER: Jason Parker, Chief of Headquarters
18 Operations Bureau with CDTFA.

19 MR. BROOKS: Christopher Brooks, attorney for
20 CDTFA.

21 JUDGE RALSTON: Thank you.

22 As confirmed at the prehearing conference,
23 there's one issue to be decided in this appeal, and that's
24 whether adjustments to the measure of unreported taxable
25 sales are warranted.

1 As discussed at the prehearing conference,
2 Appellant intends to call Mr. Gurdeep Singh, the president
3 of the corporation, and Mr. Sunny Sehgal, the secretary of
4 the corporation, to testify under oath. Mr. Sahiwal will
5 also testify under oath, and the Respondent does not
6 intend to call any witnesses.

7 Appellant has submitted Exhibits 1 through 6, and
8 Respondent has objected to Appellant's Exhibits 5 and 6.
9 Appellant's Exhibits 1 through 6 will be admitted, and
10 Respondent has submitted Exhibits A through I, and those
11 are admitted without objection.

12 (Appellant's Exhibits 1-6 were received
13 into evidence by the Administrative Law Judge.)

14 (Department's Exhibits A-I were received
15 into evidence by the Administrative Law Judge.)

16 JUDGE RALSTON: The hearing is expected to last
17 approximately 70 minutes. The Appellant will have
18 30 minutes for their presentation and witness testimony.
19 Respondent will have the opportunity to cross-examine the
20 witnesses, if they so choose. Respondent will then have
21 30 minutes for their presentation, and Appellant will have
22 approximately 5 minutes for their rebuttal. The panel may
23 ask questions of the witnesses and/or parties at any time.

24 Does anyone have any questions before we move on
25 to the opening presentations?

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MR. SAHIWAL: No questions, Judge.

JUDGE RALSTON: Thank you.

MR. SAMARAWICKREMA: No question, Judge.

JUDGE RALSTON: Thank you.

So, Mr. Sahiwal, I'm going to swear you in first.
So I'm going to ask you to please raise your right hand.

T. SAHIWAL,

produced as a witness, and having been first duly sworn by
the Administrative Law Judge, was examined, and testified
as follows:

JUDGE RALSTON: Thank you.

And now for Mr. Singh. Thank you. Yes, please
raise your right hand.

G. SINGH,

produced as a witness, and having been first duly sworn by
the Administrative Law Judge, was examined, and testified
as follows:

JUDGE RALSTON: Thank you.

And now, Mr. Seghal. Thank you.

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S. SEHGAL,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined, and testified as follows:

JUDGE RALSTON: Thank you.

Okay. We are ready for Appellant's opening presentation.

Mr. Sahiwal, you have 30 minutes for your presentation and witness testimony. So please begin when you're ready.

PRESENTATION

MR. SAHIWAL: Judge, my -- although we have submitted all the papers -- and I'll be very brief and say one thing, that the earlier audit, which was conducted, the -- it was in between. There was overtime also and the auditor did not justify the, you know, his remarks and all that. He made his report without even physical observance of the criteria, which he arbitrarily determined, like, credit card ratio of 67 percent without even actually verifying. But in the subsequent audit, which we have, the report we have submitted to Your Lordship; and there, the auditor actually observed for a week, and he determined 91 percent credit card ratio.

1 Number two, the -- well, in the audit in
2 question, the -- you know, at that time we had only one
3 cash register; and at the time, one credit card. We had
4 only one credit card issuer. So the -- we could not, in
5 fact, separately, you know, mention the -- this party hall
6 income, which is, in fact, nontaxable. And it was the
7 auditor -- CDTFA's auditor only who suggested to us that
8 we better have a separate -- you know, agent for the
9 credit card and the credit card system, and which we
10 subsequently took. And in the subsequent audit, if the
11 Department could admit and could give a ruling that the
12 party hall income is not subject to tax -- sales tax, then
13 the same criteria should be applied to our previous audit
14 also.

15 And in that case, I think I'd like Sunny Sehgal
16 to give the details on this, if you permit, ma'am. That's
17 all for my side.

18 JUDGE RALSTON: Yes. Go ahead.

19

20 WITNESS TESTIMONY

21 MR. SEGHAL: Yes. Hi, Judge.

22 So the question is the -- from the first, the
23 reason why we added the second audit -- because this was
24 the recent audit that took account after the advice from
25 the first auditor that -- to get a separate credit card

1 machine. During the audit that is in question, we only
2 have one credit card machine. So the party -- the banquet
3 halls income sales were added to the same credit card
4 machines. So that is what -- but those sales are
5 nontaxable. And the -- in our tax -- our income tax
6 returns, all our income -- our party income sales are
7 listed on to there as additional income.

8 So -- and not only that, when the second audit --
9 the recent audit that we added, that we submitted
10 documents for, the auditor actually came in and sat -- and
11 sat down. And he saw that the credit card ratios were
12 much higher than what the last -- the audit in question
13 had. So we're just try -- we really just want the fair,
14 the same parameters to be placed. Because the party
15 income sales are added into the 1099s that the auditor had
16 in the -- in the audit in question. There -- but those --
17 all those sales are not taxable because those sales also
18 include the party income sales, which is nontaxable.

19 So that's our main thing. That's our main
20 question is -- is that -- that why cannot we have the same
21 parameters in place because we have a banquet hall. We
22 rent out our banquet hall, which are nontaxable sales.
23 And this audit that we submitted -- the papers that we
24 submitted, it's listed on page 18 of that where the
25 auditor has written: The taxpayer has two separate

1 merchant accounts, one for restaurant sales and the other
2 for rental of a banquet hall. Taxpayer wasn't able to
3 provide sales documents, but provided current sales
4 contract testing. Auditor conducted a sample test to
5 check if any taxable sales were included in the banquet
6 hall transactions. After reviewing the documents, auditor
7 determined the sales proceeds processed through the second
8 merchant accounts for the banquet hall rental were
9 nontaxable and will not be included in the forthcoming
10 analysis.

11 So that is what we're saying is the -- the -- our
12 party income sales were added into the same credit card
13 machine because there was only one credit card machine.

14 JUDGE RALSTON: Mr. Sehgal, I'm going to ask you
15 to speak a little bit more slowly next time.

16 MR. SEHGAL: Okay. Sorry. Sorry about that,
17 ma'am.

18 JUDGE RALSTON: No problem. Does that conclude
19 your presentation?

20 MR. SEHGAL: Yes.

21 JUDGE RALSTON: Okay. Mr. Sahiwal, did you have
22 anything else?

23 MR. SAHIWAL: No, Judge.

24 JUDGE RALSTON: Okay.

25 MR. SAHIWAL: Oh, Judge, sorry. One thing came

1 to my mind. I don't know whether it's relevant here or
2 not. If you feel -- because after our this last -- last
3 hearing when we are meeting with Mr. Samarawickrema, he
4 raised one request that in our 2017 tax return, why there
5 were higher purchases. He asked us a question. I don't
6 know if it's relevant here.

7 The -- during the year 2017 on about three
8 occasions, there was a big power outage in our area, which
9 was, in fact, on the main line. It was not our local
10 line, and we had to destroy our -- everything because we
11 were without power. And all food items and everything
12 was -- had to be destroyed on three occasions. But then
13 the local government asked us to file and appeal -- file a
14 claim regarding that. Although, we filed the claim, but
15 we didn't get anything. I don't know whether it's
16 relevant or not, but I'd like to bring it to your notice.

17 JUDGE RALSTON: Okay. Anything else?

18 MR. SAHIWAL: Yeah, Judge. I don't have anything
19 to say.

20 JUDGE RALSTON: Okay. Thank you. Okay. So does
21 that concludes the Appellant's presentation then?

22 MR. SAHIWAL: Yes.

23 JUDGE RALSTON: So let's move on.

24 Mr. Samarawickrema, did you have any questions
25 for either witness?

1 MR. SAMARAWICKREMA: No, Judge.

2 JUDGE RALSTON: Okay. Thank you.

3 So I do have a question. So for the audit period
4 in question, what percentage of the sales are you
5 attributing to the party hall sales? Are you saying it's
6 exactly the same as the second audit? Or what act
7 percentage are you saying in the audit should be
8 attributed to the party hall sales?

9 MR. SEHGAL: Judge, the sales are added into our
10 income tax returns, so in 2017, 2018, and 2019. So I can
11 exactly -- if you give us one second, I could tell you in
12 the year of 2017 how much were our income -- our party
13 income.

14 MR. SAHIWAL: They're asking for the percentage,
15 and this is '17. Here too. Yes, it is -- well, it should
16 be the same percentage as there, right? That's 403.

17 MR. SEHGAL: Yes. So the percentage should be --
18 should the same. Because if you -- if you look at our
19 2017 income tax return, it says other income. It shows
20 \$403,546 for 2017. It was actually greater than what we
21 made in the restaurant.

22 MR. SAHIWAL: It was almost 50-50. And '17
23 and '18 also it was the most. More criteria, it was more
24 or less the same --

25 MR. SEHGAL: Yes.

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MR. SAHIWAL: -- percentage.

JUDGE RALSTON: Okay. So you're stating that the other income listed on the federal income tax return is the --

MR. SAHIWAL: Party income.

JUDGE RALSTON: Yes. So yeah, just remember to let me finish -- since we have our stenographer taking down -- yeah, even if you know the answer and you think you know what I'm going to say, that way we get a clear record. Thank you.

MR. SEHGAL: Sorry about that.

JUDGE RALSTON: No problem. Thank you.

Okay. That's all the questions I have. I'm going to check with my co-panelists.

Judge Long, did you have any questions for either witness?

JUDGE LONG: Yes, I do have some questions.

Mr. Sahiwal, did you prepare -- I see that you prepared the income tax returns for India Oven. Did you also prepare the sales and use tax returns?

MR. SAHIWAL: No. The sales tax returns were done by a different auditor when he was a preparer -- tax preparer. His name was --

MR. SEHGAL: Harry -- Harry Mahn [sic].

MR. SAHIWAL: Harry Mahn.

1 JUDGE LONG: Okay. But you did participate --
2 did you participate in the audit?

3 MR. SAHIWAL: No. He is not -- you're talking
4 about Mahn?

5 JUDGE LONG: Yeah.

6 MR. SAHIWAL: No. He's not dead.

7 JUDGE LONG: No. I --

8 MR. SAHIWAL: No. Sorry. I didn't get --

9 JUDGE LONG: I am sorry. I'm asking were you the
10 representative during the audit of India Oven?

11 MR. SAHIWAL: Sales tax audit?

12 JUDGE LONG: Yes.

13 MR. SAHIWAL: I was not there.

14 JUDGE LONG: Okay.

15 MR. SAHIWAL: He's asking if physically I was
16 there.

17 MR. SEHGAL: Yeah. No.

18 MR. SAHIWAL: I was not there physically.

19 JUDGE LONG: What books and records were used to
20 prepare the income tax returns?

21 MR. SAHIWAL: So we get the sales figure based on
22 the sales tax returns filed, and most of the information
23 is provided by the -- in this case India Oven they
24 provided the expenses and the sale and everything then we
25 tabulate it in the form and then we created like trial

1 balance ask general ledger and then we filed that, the
2 complete profit and loss and the balance sheet.

3 JUDGE LONG: Now, I understand that there was a
4 contention that there's only one cash register and one
5 credit card machine during this audit period. What was
6 used to track the differences between the reported taxable
7 sales and the unreported sales, which you are asserting
8 are party hall sales?

9 MR. SAHIWAL: They had their checks from the
10 customers and also, their expenses separately listed for
11 the party hall.

12 JUDGE LONG: Separately list --

13 MR. SAHIWAL: So that information from them and
14 tabulated separately. And the income we put it separate
15 on that checks receipt from --

16 JUDGE LONG: And was none of this information
17 available for the audit?

18 MR. SAHIWAL: During the first audit, it was the
19 other information was not available. That was on the
20 based on the party's statement and the --the major checks
21 which were received from the customers, they was tabulated
22 separately.

23 JUDGE LONG: Okay. So the federal income tax
24 returns then, were based on the sales and use tax returns,
25 plus the checks that were provided from the customers?

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MR. SAHIWAL: Yes.

JUDGE LONG: And that was the only tracking?

MR. SAHIWAL: Yes, Judge.

JUDGE LONG: Okay. Thank you. I have no further questions.

MR. SAHIWAL: Thank you, Judge.

JUDGE RALSTON: Judge Stanley, did you have any questions for either witness?

JUDGE STANLEY: I'm still thinking about it, so I might reserve and ask questions after CDTFA's response.

JUDGE RALSTON: Okay. Thank you, Judge Stanley.

And before we move on, Mr. Sahiwal, did you want to restate the contents of your letter that you submitted, Exhibit 5? Did you want to state that information for the record?

MR. SAHIWAL: Yes. I can -- I issued that certificate, and I -- on the -- you said you wanted me to swear on it. Like, I'm ready to swear that it is correct under perjury.

JUDGE RALSTON: Okay. Okay. Thank you.

Okay. So it looks like we are ready to move on to the Respondent's presentation.

Mr. Samarawickrema, you have approximately 30 minutes. So please begin when you're ready.

MR. SAMARAWICKREMA: Thank you, Judge.

1 invoices or purchase journals for the audit period.

2 During the audit, Appellant was unable to explain
3 how it reported its sales on its sales and use tax
4 returns. Appellant was also unable to explain what source
5 it relied upon to complete its sales and use tax returns.
6 The Department did not accept Appellant's reported taxable
7 sales due to lack of reliable records. The Department
8 also determined that Appellant did not provide any books
9 or records that could be used to verify its reported
10 taxable sales and its claimed exempt sales for the audit
11 period.

12 The Department completed four verification
13 methods to verify the reasonableness of Appellant's
14 reported total and taxable sales. First, the Department
15 analyzed Appellant's reported taxable sales for the audit
16 period, and these are shown on Exhibit A, page 39. The
17 Department compared the reported taxable sales with total
18 sales and calculated an overall taxable sales percentage
19 of around 60 percent, ranging from as low as 58 percent,
20 as high as 68 percent for the audit period; and these
21 calculations are shown on Exhibit A, page 39.

22 The Department also analyzed Appellant's reported
23 taxable sales for the audit period and noted average daily
24 reported taxable sales of \$747, ranging from as low as
25 \$572 to as high as \$829 for the audit period; and these

1 calculations are shown on Exhibit A, page 38. Based on
2 the restaurant's capacity, location of the restaurant,
3 customer base, and the number of days open for business,
4 the Department viewed this as a very low daily taxable
5 sale for this business. For comparison, Appellant's
6 average taxable daily sales, based on audited taxable
7 sales, were \$1,381; and these calculations are on
8 Exhibit A, page 38.

9 Second, the Department reviewed Appellant's
10 federal income tax return for years 2017 through 2019 and
11 compared the sales reflected on federal income tax return
12 of around \$1.7 million and other income of around
13 \$1.2 million with Appellant's reported total sales for the
14 same period. The Department calculated an overall
15 difference of around \$1.5 million; and these calculations
16 are on Exhibit A, page 41. The Department also compared
17 reported total sales with a cost of goods sold of around
18 \$1.4 million reflected on Appellant's federal income tax
19 returns and calculated an overall negative reported book
20 markup of little over 5 percent; and these calculations
21 are on Exhibit A, page 41.

22 If we were to accept this reported negative book
23 markup, that could mean Appellant was losing money every
24 time it made a sale. Accordingly, the Department did not
25 accept Appellant's reported total sales for the audit

1 period. However, based on the audited total sales and
2 cost of goods sold, Appellant's overall post-audited book
3 markup was around 50 percent; and this calculation is on
4 Exhibit A, page 42.

5 Third, the Department compared reported total
6 sale of around \$1.4 million to the rent of around \$252,000
7 reflected on Appellant's federal income tax returns and
8 calculated an overall rent ratio of around 19 percent; and
9 this calculation is on Exhibit A, page 41. Based on this
10 high rent ratio, the Department determined that Appellant
11 did not report all its sales on its sales and use tax
12 returns. Based on his experience in audits of similar
13 restaurants in Appellant's area, the Department expected
14 to see a lower rent ratio for this restaurant. In
15 comparison, using the audited sales, the overall rent
16 ratio is reflected at around 12 percent; and this
17 calculation is on Exhibit A, page 42.

18 Fourth, Appellant did not provide any sales
19 information for the audit period. Therefore, the
20 Department obtained Appellant's credit card sales
21 information for the audit period from its internal
22 sources; and this information is on Exhibit A, page 40.
23 The Department compared the reported total sales with the
24 credit card sales and calculated an overall credit card
25 sales ratio of around 128 percent, ranging from as low as

1 108 percent to as high as 170 percent for the audit
2 period; and these calculations are on Exhibit A, page 40.

3 The credit card sale for the audit period are
4 more than the amount of the reported total sales, and this
5 is shown on Exhibit A page 40. This is an indication that
6 not all of Appellant's cash and credit card sales
7 transactions had been reported on its sales and use tax
8 returns. Appellant was unable to explain the lower
9 reported average daily taxable sales, negative reported
10 book markups, high reported credit card sales percentages,
11 and high reported rent ratios. Therefore, the Department
12 conducted further investigations. The Department decided
13 to use a credit card sales ratio method to calculate
14 Appellant's taxable sales, but Appellant failed to provide
15 its sales information to determine its nontaxable sales
16 percentages, credit card tip percentages, and credit card
17 sales percentages.

18 Appellant also failed to provide its credit card
19 sales information for the audit period. Therefore, the
20 Department used the best available information to
21 determine audited taxable sales. So the Department
22 reviewed three similar restaurant's to determine a
23 reasonable credit card tip percentage and credit card
24 sales ratios in the area. These three restaurants were
25 located in the same general region as Appellant's business

1 and were audited by the Department with similar audit
2 periods. Based on these three similar restaurants, the
3 Department calculated an average credit card sales
4 percentage of around 68 percent and credit card tip
5 percentage of around 11 percent; and these calculations
6 are on Exhibit B, page 58.

7 In preparation for this oral hearing, the
8 Department also verified the reasonableness of this credit
9 card sales percentage using Appellant's sales and other
10 income reflected on its federal income tax returns and
11 calculated an overall credit card sales percentage of
12 around 60 percent; and this calculation is shown on
13 Exhibit A, page 40. During the audit fieldwork, Appellant
14 failed to provide credit card merchant statements or
15 credit card sales information to calculate its credit card
16 sales for the audit period. Therefore, the Department
17 obtained Appellant's credit card sales information for the
18 audit period from its internal sources; and this is on
19 Exhibit B, pages 60 through 66.

20 Then the Department used a total credit card
21 sales, credit card tip percentage of around 11 percent,
22 credit card sales percentage of around 68 percent, taxable
23 sales percentage of 70 percent, and applicable sales tax
24 rate factors to determine audited taxable sales of around
25 \$1.5 million for the audit period; and these calculations

1 are on Exhibit A, page 37. Audited taxable sales were
2 compared with reported taxable sales of around \$818,000 to
3 determine unreported taxable sales of around \$694,000 for
4 the audit period; and these calculations are on Exhibit A,
5 page 37. Unreported taxable sales were compared with the
6 reported taxable sales of around \$818,000 to calculate the
7 error rate of around 85 percent for the audit period.

8 In preparation for this oral hearing, the
9 Department calculated the unreported total sales
10 percentage of around 114 percent using sales and other
11 income reflected on Appellant's federal income tax returns
12 and sales and use tax returns; and this information
13 required to calculate these percentage is shown on
14 Exhibit A, page 41. The Department used unreported total
15 sales percentages and the taxable sales percentage of
16 70 percent with the reported total sales to determine
17 audited taxable sales of around \$2 million for the audit
18 period; and these calculations are on Exhibit A, page 43.
19 Audited taxable sales were compared with the reported
20 taxable sales of around \$818,000 to determine unreported
21 taxable sales of around \$1.2 million for the audit period;
22 and these calculations are on Exhibit A, page 43.

23 The Department noted substantial discrepancies
24 between audited and reported taxable sales using both
25 audit methods. To give a benefit to Appellant, the

1 Department assessed the unreported taxable sale of around
2 \$694,000 based on the credit card sales ratio method,
3 rather than the unreported taxable sale of around \$1.2
4 million based on sales and other income reflected on
5 Appellant's federal income tax return; and these
6 calculations are on Exhibit A, pages 35 and 43.

7 The audit calculation of unreported taxable sales
8 based on the credit card sales ratio method was fair and
9 reasonable. Further, it benefits the Appellant because it
10 was the lower of the difference determined. When the
11 Department is not satisfied with the accuracy or the sales
12 and use tax return filed, it may rely upon any facts
13 containing the return or upon any information that comes
14 into the Department's possession to determine if any tax
15 liability exists. A taxpayer shall maintain and make
16 available for examination on request by the Department all
17 records necessary to determine the correct tax liability
18 under the sales and use tax laws, and all records
19 necessary for the proper completion for the sales and use
20 tax returns.

21 When a taxpayer challenge an Audit of
22 Determination, the Department has the burden to explain
23 the basis for that deficiency. When the Department's
24 explanation appears reasonable, the burden of proof shifts
25 to the taxpayer to explain why the Department's asserted

1 deficiencies are not valid. Since Appellant failed to
2 provide necessary records, the Department used the best
3 available information to determine the unreported taxable
4 sales for the audit period. The audit calculation of
5 unreported taxable sales, based on the best available
6 information, was fair and reasonable.

7 Appellant claim that the audit liability is
8 overstated because the rental income from the banquet hall
9 may not have been excluded from the calculation of the
10 audited taxable sales. As support, Appellant provided
11 federal income tax returns for years 2017 through 2019 to
12 show that the other income represent nontaxable banquet
13 facility rentals; and these are on Exhibit C. Recently,
14 Appellant also submitted audit working papers for the
15 subsequent audit period January 2020 through
16 December 2022. However, Appellant failed to provide his
17 banquet facility rental contracts, related sales invoices,
18 or other similar documents to determine the taxability of
19 banquet facility rental income.

20 The Department analyzed Appellant's argument and
21 ultimately rejected it. Upon examination of those
22 documents, the Department noted that Appellant did not
23 provide any source documentation or any other information
24 to collaborate the figures listed as other income in
25 Appellant's federal income tax returns. Appellant also

1 failed to demonstrate that its business environment and
2 the business activities during the subsequent audit period
3 were the same as this audit period.

4 Nevertheless, the Department analyzed these
5 federal income tax returns with Appellant's sales, other
6 income, cost of goods sold, rent expenses, and Appellant's
7 credit card sales information and calculated book markups,
8 credit card sales ratios, rent ratios for the audit
9 period. For example, excluding other income reflected in
10 Appellant's federal income tax return, the Department
11 calculated overall book markup of around 17 percent,
12 credit card sales ratio of around 104 percent, rent ratio
13 of around 15 percent; and this calculation or the
14 information required to calculate these percentages are
15 shown on Exhibit A, pages 40 and 41.

16 A similar analysis was made using both sales and
17 other income reflected on Appellant's federal income tax
18 returns. Based on these analyses, the book markup was
19 around 102 percent, credit card sales ratio was around
20 60 percent, and rent ratio was around 9 percent; and these
21 calculations are shown on Exhibit A, pages 40, 41, and 42.
22 In addition, the Department also analyzed Appellant's
23 taxable sales using its cost of goods sold reflected on
24 these federal income tax returns, 150 percent expected
25 book markup and taxable sales ratio of 70 percent to

1 verify the reasonableness of audit findings.

2 Based on these analyses, the Department concluded
3 that by using the cost-plus markup method would increase
4 the unreported taxable sales by around \$1 million from
5 \$694,000 to \$1.7 million. Appellant has not provided any
6 documents of original entry, such as sales receipts, guest
7 checks, credit card sales receipts, catering invoices,
8 banquet sales contracts, banquet sales invoices and
9 related documents, sales journals, including banquet sales
10 journals or sales summaries for any part of the audit
11 period to support its contention or disprove the
12 Department's calculation of audited taxable sales for this
13 audit period.

14 Furthermore, the average purchases reflected on
15 Appellant's federal income tax return was around \$478,000
16 for this audit period and \$262,000 for the subsequent
17 audit period; and these amounts are shown on Exhibit C,
18 Exhibit A, page 42, and Appellant's recent Exhibit 6.
19 This notable decrease indicates that Appellant's business
20 activities were not inconsistent between the audit
21 periods. Similar variances were noted on sales, other
22 income wages, depreciation expenses, contract labor
23 expenses, average book markups, and net income between the
24 audit periods; and this information is shown on Exhibit C,
25 Exhibit A, page 42, and Appellant's recent Exhibit 6.

1 Based on the subsequent audit, the Department determined
2 Appellant falls under the 80-80 rule and disallowed all
3 claimed food sales for the subsequent audit period.

4 In this audit, the Department allowed exempt food
5 sales of around \$700,000 without any supporting documents;
6 and this is shown on Exhibit A, page 37. The subsequent
7 audit further supports that the unreported taxable sales
8 based on the credit card sales ratio method for this audit
9 was fair and reasonable because the Department allowed
10 around \$700,000 adjustment for unsupported nontaxable food
11 sales in this audit; and this adjustment is shown on
12 Exhibit A, page 37.

13 Also, this audit period was prior to COVID-19
14 pandemic, and the subsequent audit period was during and
15 after the COVID-19 pandemic. As such, audit working
16 papers from the subsequent audit period are not likely
17 representative of Appellant's business activities during
18 the audit period. From all these analyses, the Department
19 concluded that it used an audit approach which yield the
20 lowest deficiency measure to give a benefit to the
21 Appellant. Appellant has not provided any reasonable
22 documentation or evidence to support an adjustment to the
23 audit finding or provided any documentary evidence to
24 establish a more accurate determination. Therefore, the
25 Department requests the appeal be denied.

1 the sales, they were the real fact based on the reality,
2 not on the ratio analysis sitting in air conditioned
3 rooms. For -- to give you an example, he mentioned that
4 they took the figures from the three restaurants in that
5 area.

6 Judge, I would like to say that within that 10
7 miles -- sorry, 10 -- not -- about 6 miles of this
8 restaurant, if he can prove even a single restaurant of
9 this kind providing Indian food along with the banquet
10 hall, I'll lose -- I'll withdraw my claim. It was a wrong
11 presentation that they took the 3 restaurants, and they
12 would say they get -- they took it -- they took based
13 on -- the figures based on that. There's not even a
14 single restaurant providing Indian food and the banquet
15 hall within 5 -- 5 -- 6 even miles -- radius 6 miles of
16 this restaurant. It is my first contention.

17 Second, the thing is he's talking about the rent
18 ratio. I don't understand how can you talk about the rent
19 to the sales when, you know, the rent depends upon the
20 area, the neighbors, neighborhood, and the kind of the
21 people, and not that the -- the -- you rent varies from
22 place to place. And the India Oven was there since the
23 year 2006 at the same place, and the rent ratio now coming
24 and considering that I think is totally unrealistic on the
25 part of the Department to do it.

1 And third, he was say talking about the credit
2 card ratio. Although we agree that because of the -- like
3 COVID, that things might have changed, but the same food
4 was being served in the banquet hall. Same kind of people
5 attended the parties. How could the ration go up from
6 67 percent to 91 percent in the subsequent audit?

7 Regarding the -- his contention that we did not
8 provide the information, which time and again, time and
9 again, he resorted to. And the thing is if we did not
10 provide the information, how could the audit be done? The
11 fact was that their auditor was in a hurry, and he, for
12 everything, if we -- I agree that Gurdeep Singh was
13 hospitalized, and he was blinded from one eye. And for
14 the other eye, he can only see 50 percent. He asked for
15 the time, but it is not that we did not provide him any
16 information. That is totally to say we did not.
17 Everything was done in the absence of the information that
18 we do not agree, and we can still provide the things,
19 which we provided to him. And that was it.

20 And the second part about -- I think I'd like
21 Mr. Sunny to use just two minutes for this balance on
22 this.

23 What is the observation of the Department?

24 MR. SEHGAL: Hi, Judge.

25 So the official said that the following -- the

1 following audit that the auditor did not get any records.
2 If you look at page 18, it stated in the auditor's words
3 from the -- "Taxpayer wasn't able to provide sales
4 contracting testing. Auditor conducted a sample test to
5 check if any taxable sales were included in the banquet
6 hall transactions. After reviewing the documents, auditor
7 determined that the sales process through the second
8 merchant account for the banquet hall rentals were
9 nontaxable and will not be included in the forthcoming
10 analysis."

11 So the question is that during that time period,
12 this audit in question, my dad was sick. We provided
13 Mr. -- the auditor the documentation from the doctors that
14 my dad is not well. His response was well, I have to
15 finish my audit. You guys could file an appeal. We said
16 okay. So we filed an appeal, and that's where we are at.
17 So we didn't -- since my dad's health was not well, which
18 is still not well, that's why when this audit happened,
19 the following audit, we provided all the documentation to
20 the auditor. The Z-tapes -- he came -- he came and got
21 the Z-tapes and also fourth.

22 If you know about thermal paper, the receipt
23 paper, ma'am, even after a month or so later, the numbers
24 get erased. It just -- that's how thermal paper is. Even
25 the documents I had provided to this auditor, the

1 following audit, even the receipts were getting faded. So
2 we're talking about 2017, 2018, 2019. So -- but,
3 nonetheless, we provided the -- this is why this audit --
4 the following audit was submitted to you guys to show that
5 the contract sales contract -- the current sales contracts
6 for the banquet hall we provided, and we provided them the
7 sales, the sales contract.

8 He was able -- the auditor was able to confirm
9 that the banquet hall sale rentals were nontaxable. All
10 we're asking is, during this audit period that's in
11 question, have the same parameters apply to this audit.
12 That's all we're asking. Because this audit was actually
13 done in person, whereas the audit that is in question was
14 not done in person. It was generalized because he -- the
15 official has said that they compared it with three other
16 restaurants. Well, no other restaurant has a banquet hall
17 compared with their restaurant. No ones provide the
18 banquet hall for rental.

19 So for them to compare -- I -- I don't know how
20 they're comparing similar restaurants because there's no
21 banquet hall, number one. And number two is the credit
22 card ratios they determined is incorrect. Because if you
23 see this audit that was done in person while the auditor
24 was here, you can see the ratio was much higher. And the
25 party income sales were in count -- he took account for

1 that. Whereas this audit does not take into any account
2 for the party income sales.

3 MR. SAHIWAL: Thank you very much.

4 MR. SEHGAL: Thank you.

5 JUDGE RALSTON: Okay. Thank you. So I did have
6 a question. So just to clarify, during the audit in
7 question, not the subsequent audit, you're stating that
8 you provided sample checks to CDTEFA; is that correct?

9 MR. SEHGAL: No, judge. I'm -- what I was
10 applying to is the -- the audit that was done recently, we
11 provided information to him, not the previous audit. The
12 previous audit in question that we're talking about, my
13 dad was sick. The auditor provided documentation from the
14 doctor that he was not able to see. And Mr. -- the
15 auditor said well, I have to finish my audit because we
16 have a time frame. You can file an appeal and go from
17 there.

18 So that's why we filed the appeal, because he
19 said I have to finish my audit in a time -- because they
20 have a time frame. And he's like, I understand your dad
21 is sick, but I have to finish my audit. You've got to
22 file an appeal. So that's why we filed an appeal.

23 JUDGE RALSTON: Okay. I understand. So do you
24 have documentation for the prior audit period or you --

25 MR. SEHGAL: Ma'am, I -- we should have. But as

1 I said, since the sales were on a thermal paper,
2 they're -- they're probably already faded by that.
3 Because we don't keep -- because everything was -- that's
4 even when I provided the Z-tapes for this audit -- the
5 previous audit -- this recent audit, even then the sales
6 were getting faded. So --

7 MR. SAHIWAL: We have those, yes.

8 JUDGE RALSTON: Right. I understand. So
9 that's --

10 MR. SEHGAL: I mean, I can provide. But if
11 they're not legible, it's going to be -- that is why we
12 provided our sales tax to show the party income sales. We
13 did have party income sale as well as -- but since they
14 only -- they were able to pull this credit card
15 information from the 1099s. The 1099 sales also include
16 our banquet hall rentals. So the way we separated our --
17 from our sales tax, we paid on the sales tax the items --
18 items that were taxable, we reported those. But the other
19 sales we did not report because they are nontaxable, which
20 are our banquet hall sales.

21 JUDGE RALSTON: Okay. I understand. So when a
22 party or a person comes and they want -- during the audit
23 period, not the subsequent audit, the audit period here.
24 If a party wanted to rent the banquet hall, was there a
25 contract? Was there -- what kind of documents --

1 MR. SEHGAL: During that time, it was -- we
2 didn't have any contracts. But after -- but after 2020,
3 we started -- after, you know, COVID, we made a contract.
4 Beforehand it was just, you know, customers give a deposit
5 and so forth. You know, my dad was more old school. So
6 now since I've helping my dad out trying to get more
7 tracking and everything. So that's what we were doing.
8 Everything was just written on paper. But now after 2020,
9 everything is -- we do have contracts. And that was
10 provided in the subsequent audit to the auditor as well.

11 JUDGE RALSTON: Okay. Thank you. I'm going to
12 check with my panel members.

13 Judge Long, did you have any questions for either
14 party?

15 JUDGE LONG: Yes, I did have a question for
16 CDTFA, actually.

17 Appellant questions the similarly situated
18 businesses, and I wanted to confirm because there's little
19 information in the audit work papers regarding what types
20 of businesses they are. Was similarly situated Indian
21 restaurants in the Fresno area? Or is it just similarly
22 situated restaurants of the same size and types of menu, I
23 guess?

24 MR. SAMARAWICKREMA: Judge, this is Nalan
25 Samarawickrema. If you go -- if you may go to Exhibit A,

1 page 40, the -- at the time of the field work, the
2 taxpayer Appellant did not provide any information, not
3 even the federal income tax returns. And the Department
4 only had the credit card sales. So that's the reason we
5 used -- the Department used three similar businesses and
6 calculated almost a 68 percent credit card ratio. But now
7 we have the credit card -- I mean, we have the federal
8 income tax returns.

9 Based on the taxpayer's own federal income tax
10 returns, the credit card ratio for 2017 is 67.79, 2018,
11 67.75, and 2019, 49.85; for 3 averages, 60 percent. So
12 the right credit card ratio should be 60 percent based on
13 the taxpayer's own federal income tax return. The reason
14 we use three similar businesses is because we didn't have
15 anything, but even three we have 60 percent. So by using
16 68 percent from the similar businesses, we give a huge
17 benefit for the Appellant.

18 JUDGE LONG: I understand that. I understand
19 that it works worse for Appellant when -- if you calculate
20 it from the income tax return, but I'm just questioning
21 for the sake of clarity. Because, Mr. Sahiwal, you know,
22 question whether there were three similarly situated
23 Indian restaurants within -- I believe you said six miles
24 of India Oven. And I just wanted to clarify, we're not
25 talking about Indian restaurants. We're just talking

1 about restaurants in general; is that correct?

2 MR. SAMARAWICKREMA: That's correct. Yes, Judge.

3 JUDGE LONG: Okay. Thank you. No further
4 questions.

5 JUDGE RALSTON: Okay. Thank you, Judge Long.

6 Judge Stanley, did you have any questions for
7 either party?

8 JUDGE STANLEY: Just a follow up quickly for
9 Mr. Sehgal.

10 You had mentioned that you had the records
11 available, but that Mr. Singh was sick and couldn't see
12 during the time of the audit. Did anyone try to step in
13 for him and help or provide the documents at the Appeals
14 Bureau conference with CDTFA?

15 MR. SEHGAL: The con -- we didn't have a
16 conference. I did talk to Mr. Manvir Singh at that time,
17 and I did provide him the sales -- the tax returns. So
18 I'm not sure. And we -- he asked for the tax returns, and
19 I did provide him the tax returns. I'm not sure why they
20 were not added to the audit. But he -- I did provide him
21 the tax returns. But nonetheless, you know, tending to my
22 dad at that time, even now, Mr. Manvir Singh, I had
23 provided him documentation that my dad's health was not
24 well, and that I was not able to meet with
25 Mr. Manvir Singh at that time.

1 He said that's no problem. I have to finish my
2 audit and you guys could file an appeal. But we did
3 provide him the tax returns. I am not sure why the tax
4 returns were not in the audit, but we -- we resubmitted
5 the tax returns. And that's what you guys have, these
6 exhibits. But the tax returns were provided to
7 Mr. Manvir Singh.

8 JUDGE STANLEY: Okay. Thank you. That's all I
9 have.

10 JUDGE RALSTON: Okay. Thank you, Judge Stanley.

11 So we are ready to conclude this hearing.
12 Today's hearing in the Appeal of India Oven, Inc., is now
13 adjourned, and the record is closed.

14 The judges will meet and decide your case later
15 on, and we'll send you a written opinion of our decision
16 within 100 days.

17 Thank you everyone for attending.

18 The next hearing will resume after a short break.

19 (Proceedings adjourned at 10:58 a.m.)

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I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

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I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 1st day of April, 2025.

ERNALYN M. ALONZO
HEARING REPORTER