

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA No.284/Hyd/2018		
Assessment Year: 2014-15		
Om Ganesh Wines, Hyderabad. PAN: AADFO 1227 G	Vs.	Income Tax Officer, Ward-6(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri S. Rama Rao	
Revenue by:	Sri Nilanjan Dey, DR	
Date of hearing:	08.11.2018	
Date of pronouncement:	26.12.2018	

ORDER

PER S. RIFAUH RAHMAN, A.M.:

This appeal filed by the assessee against the order of the CIT(A)-6, Hyderabad dated 03/10/2017 for the assessment year 2014-15. In this appeal, assessee raised the following grounds of appeal:-

- “1. The order of the Ld. CIT(A) is erroneous to the extent it is the prejudicial to the appellant.
2. The Ld. CIT(A) erred in not directing the Assessing Officer to allow deduction of remuneration and interest paid to partners as per the provisions of section 40(b) of the Act.
3. The Ld. CIT(A) erred in confirming the action of the Assessing Officer in including the interest on the term deposit of Rs. 75,594/-.”

2. Brief facts of the case are that the assessee-firm, engaged in the business of ‘wines’, filed its return of income admitting total income of

Rs. 6,03,440/-. The case was selected for scrutiny under CASS. During the assessment proceedings, the assessee was asked to produce sale bills, stock register etc for verification. In response, assessee could not furnish any such details and expressed its inability to produce sale bills as it is impossible to maintain perfect sale bills in its line of business. In view of this, the A.O rejected the assessee's books of account and estimated the income @ 5% of the cost of goods put to sale. Further, A.O. also brought to tax interest on fixed deposits amounting Rs. 73,594/- as it forms part of the total income and completed the assessment u/s 143(3) of the Act.

3. Aggrieved, assessee preferred an appeal before the first appellate authority.

4. During the proceedings before the CIT(A), assessee made certain written submissions stating that the assessee has submitted all the relevant details before the A.O. and prayed that the A.O. may be directed to estimate the income @ 3% of the cost of goods put to sale instead of 5%. It was also submitted before the CIT(A) that the fixed deposits are made in connection with the business activities and therefore, it cannot be added to the estimated income of the assessee. After hearing the assessee and on perusal of the submissions made before him, CIT(A) partly allowed the assessee's appeal upholding the A.O.'s decision on the above two issues. Aggrieved, assessee is in appeal before us pleading for estimation of income at 3% of cost of the goods put to sale.

5. Learned Counsel for the Assessee placed reliance upon the following decisions wherein the coordinate Bench of this Tribunal has estimated the income from wines at 3% of the cost of goods put to sale.

- 1) Sri Venkateswara Wines vs. ITO (ITA No.1206/Hyd/2015, dt: 27.11.2015 and ITA No. 1198/Hyd/2015);
- 3) Kanakadurga Wines, Hyderabad (ITA No.591/Hyd/2011, dated 28/07/2011)
- 4) Sri Om Wines, Secunderabad (ITA No. 1205/Hyd/2015, dated 30/11/2015)

6. Learned Departmental Representative, on the other hand, supports the orders of the authorities below.

7. Considered the rival contentions and the material on record. The assessee came on appeal before us raising the above-mentioned three grounds out of which, Ground No.1 is general in nature. Vide Ground No.2 assessee is seeking deduction of remuneration and interest paid to partners u/s 40(b) of the Act, since the Ld. CIT(A) has estimated the income @ 5% of the cost of the goods put to sale. We noticed from the recent decisions of this Bench i.e., in the case of Sri Venkateswara Wines, Secunderabad (ITA No.1206/Hyd/2015, dated 27.11.2015), the Tribunal held that the estimation of profit @ 3% on the cost of the goods put to sale is reasonable, which is net of all allowances. In the instant case, assessee seeks additional deduction u/s 40(b) after estimation of 5% of the profit. Since the Bench has taken a decision that the estimation of 3% of the cost goods put to sale is reasonable in this line of business, which is net of all other deductions, in our considered view, we direct the Assessing Officer to estimate the income @ 3% of net of all other deductions / allowances. Accordingly, the grounds raised by the assessee are interconnected with the estimation of income, this ground is partly allowed.

8. As regards Ground No.3, the assessee has earned interest income on the term deposits. No doubt it is connected with the

business run by the assessee, but we have estimated the income of the assessee based on the main line of business ie., selling and distribution of wines, and therefore, the earning of interest income is an additional income unconnected to the main business of the assessee. Therefore, we uphold the decision of the CIT(A) on this issue. Accordingly, Ground no.3 raised by the assessee is dismissed.

9. In the result, appeal filed by the assessee is partly allowed.

Pronounced in the open Court on 26th December, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 26th December, 2018

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Copy to:-

1)	Om Ganesh Wines, D.No.7-1-237/12 & 13, Balmabet, Hyderabad.
2)	Income Tax Officer, Ward-6(2), I.T. Towers, A.C.Guards, Hyderabad.
3)	The CIT(A)-6, Hyderabad
4)	The Pr. CIT-6, Hyderabad
5)	The DR, ITAT, Hyderabad
6)	Guard File