

**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. 2035/Hyd/2018
Assessment Year: 2014-15**

Yadagiri Kummari, RR District. vs. Income-tax Officer,
Ward – 8(2), Hyderabad.

PAN – ANWPK 2154N

(Appellant) (Respondent)

Assessee by : Shri K.C. Devdas
Revenue by : Shri R. Mohan Kumar

Date of hearing : 23/01/2019
Date of pronouncement : 30/01/2019

ORDER

PER S. RIFAUH RAHMAN, A.M.:

This appeal filed by the assessee is directed against the order of CIT(A) – 2, Hyderabad, dated 27/07/2018 for AY 2014-15.

2. Brief facts of the case are, the assessee, filed his return of income for the AY 2014-15 on 13/11/2014 declaring taxable income of Rs. 5,22,630/-, which was selected for scrutiny under CASS and notices u/s 143(2) and 142(1) was issued to the assessee. In response to the said notices, the assessee filed all the information called for. The AO completed the assessment u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') by estimating the income at 5% on the stock put to sales. The stock put to sale was arrived at Rs. 3,93,45,422/- and the profits were estimated at Rs. 19,67,271/-. Since the assessee already offered profits of Rs. 4,42,828/- towards liquor business income, the AO added the remaining amount of Rs. 15,24,443/- to the income returned, keeping in mind the nature of business activity and in the absence of any supporting bills/invoices for the sales.

2.1 During the course of assessment proceedings, the AO asked the assessee to produce sale bills, purchase ledgers along with explanation for low gross profits rate of 11.57% disclosed in the return of income as against the gross profit margin of retailers fixed by the Government at 24%. In response thereto, the assessee requested to adopt the net profit rate @3% of the cost of goods put to sale. As such, the AO gave a finding of fact that the assessee was not maintaining proper books of account with regard to sales turnover reflected in the Trading and Profit & Loss account filed along with the return of income. Also, the assessee could not give plausible explanation with regard to low gross profit margin. In view of this, the AO resorted to estimation of net profit @5% of the cost of goods put to sale.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) confirmed the action of AO.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

1. The order of the Ld. Commissioner of Income Tax (Appeals)-2, Hyderabad ('CIT(A)) in confirming the estimation of income at 5% of cost of sales at Rs. 15,24,443 is wholly unsustainable both on facts and in law.

2. Without prejudice to any of the grounds raised the estimation of income at 5% of cost of sales is on the higher side.

3. The CIT(A) failed to observe that the Ld. Assessing Officer ('AO') had nowhere in the assessment order questioned the veracity of the books of accounts but only rejected the same on the premise non-availability of bills and hence erred in confirming the action of the AO.

4. The CIT (A) failed to observe that the provisions of Sec. 145(3) can be invoked "when the AO is not satisfied about the correctness or completeness of the accounts of the assessee or where the method of accounting provide in sub section (1) has not been regularly followed by the assessee or income has not been computed in accordance with the standards notified under

sub section (2) of the I.T. Act, 1961, which was not initiated by the AO.

5. The CIT(A) erred in upholding the rejection of books of accounts of the Appellant only on the basis of the supporting documentation and not connected in any way to the authenticity of the books of accounts.

6. Without prejudice to any of the grounds above, the CIT(A) erred in dismissing the appeal on the premise that none appeared when the address for communication as mentioned in the Assessment order and Form 35 were different from what was mentioned in the CIT(A) order, thus not providing an opportunity to the Appellant.

7. The CIT (A) erred in dismissing the appeal that despite notices being sent none appeared as this was due to the fact that the notices were sent to the incorrect address and thus the dismissal was a violation of principles of natural justice.

8. Any other ground(s) that may arise at the time of hearing.”

5. Considered the rival submissions and perused the material on record. The coordinate benches of this Tribunal consistently taking a view that estimation of income at 3% of the cost of the goods sold is reasonable in this line of business. In the case of Sri Venkateswara Wines in ITA No. 1206/Hyd/2015, dated 27/11/2015 for AY 2011-12, the coordinate bench has held as under:

“5. Having regard to the rival contentions and the material on record, we find that the assessee has not maintained any books of account and therefore, the estimation of income is justified. It is only the rate at which the income is to be estimated is before us. A.O. has estimated the income at 5% of the cost of goods sold, while the assessee is seeking the estimation at 3% of the cost of goods sold. We find that in the case of Venkateswara Wines, Nizamabad (supra), the Coordinate Bench of this Tribunal has taken note of the decision of Hon'ble High Court of Telangana and Andhra Pradesh in ITA.No.1198/Hyd/2015 Sai Venkateswara Wines, Secunderabad the case of CIT vs. Kamlekar Shankar Lal (supra) to hold as under :

"6. Having regard to the rival contentions and the material on record, we find that the AO has called for books of account of the assessee but the assessee had failed to produce the same. Therefore, AO had estimated the income of the assessee at 2.5% of the turnover. The CIT wants the same to be estimated at 5% of the total turnover because the Tribunal in the case of an assessee carrying on the same business

of sale of IMFL has estimated the income at 5% of the turnover. This, in our view, is not justified as held by the Coordinate Bench of this Tribunal. The uniform net profit cannot be adopted in each and every case of similar business. Estimation of net profit must be on the basis of facts involved in each and every case. Therefore, in our view, there is no error committed by the AU in estimating the profit at 2.5% of the total turnover. Thus grounds of appeal No.2 & 3 are allowed."

Therefore, we direct the AO to adopt 3% of the cost of goods of liquor sold as the income of the assessee.

6. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 30th January, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 30th January, 2019

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Copy to:-

- 1) Shri Yadagiri Kummari, Sekhar & Co., 133/4, Rashtrapathi Road, Secunderabad – 500 003
- 2) ITO, Ward – 8(2), IT Towers, AC Guards, Hyderabad.
- 3) CIT(A) – 2, Hyderabad.
- 4) Pr. CIT - 2, Hyd.
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File