

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.418/Vizag/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Jami Venkata Ramana
Srikakulam
[PAN No.AKFPJ1597C]
(अपीलार्थी / Appellant)

ITO, Ward-1
Srikakulam
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri C. Subrahmanyam, AR
प्रत्यार्थी की ओर से / Respondent by : Shri D.J.P. Anand, DR
सुनवाई की तारीख / Date of hearing : 02.04.2018
घोषणा की तारीख / Date of Pronouncement : 06.04.2018

आदेश / O R D E R

PER V. DURGA RAO, Judicial Member:

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Appeals)-2, Guntur dated 24.8.2016 for the assessment year 2011-12.

2. Ground Nos.1.1 to 1.2 relating to estimation of income in IMFL (Indian made Foreign liquor) business. Facts are in brief that the assessee is an individual carrying on business in purchase and sale of IMFL in Srikakulam District. For the A.Y. 2011-12 he filed return of income declaring an income of ₹ 3,84,130/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called as 'the Act') and the case was selected for scrutiny and the A.O. has not accepted the income declared by the assessee and estimated the profit from the business at 20% of the stock put to sale. On appeal, the CIT(A) has scaled down the percentage of profit from 20% to 10% and directed the A.O. to re-compute the income at 10% of purchase price.

3. On being aggrieved, assessee carried the matter in appeal before the Tribunal. At the time of hearing, the Ld. Counsel for the assessee has submitted that the issue involved in this appeal is squarely covered in the case of Sri Vysyaraju Satyanarayana Raju, Srikakulam Dist. In ITA No.2/Vizag/2016, which is reproduced as under:

3. On being aggrieved, assessee carried matter in appeal before the Tribunal. At the time of hearing, the Ld. Counsel for the assessee has submitted that the issue involved in this appeal is squarely covered by the decision of the coordinate bench of this Tribunal where the Tribunal has scaled down the estimation of profit from 10% to 5% in the case of Tangudu Jogisetty in ITA No.96/Vizag/2016 by order dated 2.6.2016.

4. On the other hand, the Ld. D.R. strongly supported the order passed by the authorities below.

5. I have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The only issue involved in this appeal is estimation of profit in respect of IMFL business carried by the assessee. In this respect, the coordinate bench of the Tribunal in the case of Tangudu Jogisetty (supra) has considered the profit level in the line of business and decided that 5% of purchase price is reasonable profit margin in the line of IMFL business and directed the A.O. to re-compute the profit of the assessee. The relevant portion of the order is extracted as under:

8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The A.O. estimated net profit of 20% on stock put for sale. The A.O. was of the opinion that the assessee has not maintained proper books of accounts and vouchers in support of purchases and sales. The A.O. further observed that the assessee has failed to maintain stock registers and books of accounts maintained by the assessee are not susceptible for verification, therefore rejected the books of accounts and estimated net profit of 20% by relying upon the decision of Hon'ble A.P. High Court. It is the contention of the assessee that the net profit estimated by the A.O. is quite high when compared to the nature of business carried on by the assessee. It is further submitted that the case law relied upon by the assessee is not applicable to the facts of the present case. The case before the Hon'ble A.P. High Court was that the assessee is into the business of trading in arrack, whereas it is in the business of dealing in IMFL. The assessee further contended that IMFL trade was controlled by the State Government through A.P. State Beverages Corporation Ltd. and the prices of the products are fixed by the State Government. The assessee being a license holder of State Government cannot sell the products over and above the MRP fixed by the State Government. We find force in the arguments of the assessee for the reason that the A.O. has estimated the net profit by relying upon the decision of A.P. High Court in the case of CIT Vs. R. Narayana Rao in ITA No.3 of 2003 which is rendered under different facts. The A.P. High Court has considered the case of an arrack dealer, whereas, the assessee is into the business of dealing in IMFL. Therefore, we are of the view that the A.O. was not justified in relying upon the judgement, which was rendered under different facts to estimate the net profit. On the other hand, the Ld. A.R. for the assessee, relied upon the decision of ITAT, Visakhapatnam bench in the case of T. Appalaswamy Vs. ACIT in ITA No.65 & 66/Vizag/2012. We have gone through the case laws relied upon by the assessee in the light of the facts of the present case and finds that the coordinate bench of this Tribunal, under similar circumstances held that estimation of 5% net profit on purchases is reasonable. The relevant portion of the order is reproduced hereunder:

"3. We have heard the parties, perused the orders of the revenue authorities as well as other materials on record. It is the contention of the Ld. A.R. that the estimation of profit at 16% is

high and excessive considering the normal rate of profit in this line of business. Whereas, the Ld. D.R. supported the order of the CIT(A). Having considered the submissions of the assessee, we are of the view that the issue is no more res integra in view of a series of decisions of the ITAT Hyderabad bench in similar cases. The coordinate bench in case of ITA No.127/Hyd/12 and others dated 18.05.2012 as well as a number of other cases have held that profit in case of business in Indian made foreign liquor has to be estimated at 5% of the purchases made by the assessee. Therefore, following the decision of the ITAT Hyderabad bench, we set aside the order of the CIT(A) and direct the assessing officer to estimate the profit from the wine business of the assessee by applying the rate of 5% of the purchases made net of all other deductions. The assessing officer should also bear in mind that in no case the income determined should be below the income returned."

9. Considering the facts and circumstances of this case and also respectfully following the ratios of coordinate bench, we are of the view that the net profit estimated by the A.O. by relying upon the decision of Hon'ble A.P. High Court (supra), which was rendered under different facts is quite high. On the other hand, the assessee relied upon the decision of coordinate bench and the coordinate bench under similar circumstances estimated the net profit of 5% on total purchases net of all deductions. No contrary decision is placed on record by the revenue to take any other view of the matter than the view so taken by the coordinate bench. Therefore, we direct the A.O. to estimate the net profit of 5% on total purchases net of all deductions. Ordered accordingly.

4. In view of the above decision of the coordinate bench of the Tribunal, I direct the A.O. to re-compute the income of the assessee at 5% of purchase price. Accordingly, this ground of appeal raised by the assessee is allowed.

5. Ground No.1.3 & 1.4 of the appeal are relating to unexplained expenditure to the tune of ₹ 12,30,677/-. In the assessment order, the A.O. has noted that the assessee has claimed an expenditure of

₹ 25,82,484/- which includes first instalments of license fee of ₹ 16,82,174/- and FDR of ₹ 4,25,000/- and towards first purchase of stock ₹ 3 lakhs and BG commission of ₹ 1,65,310/- during the month of June, 2010. Thus, the assessee was asked to prove sources for an amount of ₹ 25,82,484/-. The A.O. has asked the assessee to prove the sources for the above amount. It was submitted before the A.O. that he has regularly assessed to tax and he filed return of income for the A.Y. 2010-11 as per which there was a capital balance of ₹ 31,51,807/-, which was almost in the form of stock as on 31.3.2010. Therefore, credit for this claim is allowed. The assessee has also shown to have accepted unsecured loan to the tune of ₹ 11,88,370/- which included both brought forward and loans taken during the year. However, no credit can be allowed to this claim since assessee failed to establish the communication between the unsecured loans accepted with that of utilization of the same for the purpose of investment in the current year during June, 2010. Therefore, the balance of ₹ 12,30,677/- assessee has to explain. The A.O. has given many opportunities to the assessee to prove the sources of the balance investment of ₹ 12,30,677/- but no evidence was filed before the A.O., therefore, the A.O. treated the amount of ₹ 12,30,677/- as an unexplained source and added to the income of the assessee as income from other sources. Before the

CIT(A), the assessee has filed an additional evidence wherein it is stated that he has borrowed certain amounts from Gudla Venkata Rao, Gudla Nageswara Rao, Gudla Jyothi, Pathivada Appa Rao, Baratam Adinarayana. No evidence is filed in respect of the creditworthiness of the parties. The assessee is not able to produce the parties for examination. The CIT(A) after considering the above, he has mentioned that "it is worth mentioning that the assessee himself is not traceable the fact which is mentioned by the A.O. and accepted by the A.R. Accordingly, addition is confirmed. On appeal before us, no evidence is produced in respect of addition sustained by the A.O. confirmed by the CIT(A). We find no infirmity in the order passed by the CIT(A) and no interference is called for and accordingly these grounds of appeal are dismissed.

6. In the result, the appeal filed by the assessee is dismissed.

The above order was pronounced in the open court on 6th Apr'18.

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)

Sd/-
(वी. दुर्गाराव)
(V. DURGA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 06.04.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – Smt. N. Krishna Syamala, C/o P. Nageswara Rao & Co., Auditors, Anjuman Buildings, Lalapet, Guntur-522 003.
2. प्रत्यार्थी / The Respondent – the Pr. CIT, Guntur
3. आयकर आयुक्त / The CIT, Guntur
4. आयकर आयुक्त (अपील) / The CIT (A), Guntur
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary
ITAT, VISAKHAPATNAM