

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गा राव, 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.69/Viz/2015
(निर्धारण वर्ष/Assessment Year:2011-12)**

Mandava Nageswara Rao
D.No.30-13-11
Dabagardens
Visakhapatnam
[PAN :ADPPM7610Q]

Vs. Income Tax Officer
Ward-1(2)
Visakhapatnam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri G.V.N.Hari, AR

प्रत्यर्थी की ओर से / Respondent by

: Shri K.C.Das, DR

सुनवाई की तारीख / Date of Hearing

: 11.04.2018

घोषणा की तारीख/Date of Pronouncement

: 18.04.2018

आदेश / O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the assessee against the order of the Commissioner of Income-Tax (Appeals)[CIT(A)]-1, Visakhapatnam vide ITANo.0557/2014-15/ITO W-1(2) VSP/2014-15 dated 27.01.2015 for the assessment year 2011-12.

2. The assessee has raised seven grounds of appeal in total in this case and the Ld.AR did not press Ground No.1 and 3 to 7. Hence, Ground No.1 and 3 to 7 are dismissed as not pressed.

3. The only ground remained for adjudication is Ground No.2 relating to the purchases of Sri Sai Durga Bar & Restaurant. During the assessment proceedings, the Assessing Officer(AO) observed that as per the information received from Andhra Pradesh Beverages Corporation Ltd.(APBCL), the assessee made purchases of liquor worth Rs.5,64,55,381/-, whereas the assessee had admitted turnover of Rs.4,46,22,154/- resulting in difference of Rs.1,18,33,227/-. The AO called for explanation from the assessee and the assessee admitted that he was also running proprietary concern in the name and style of Sri Sai Durga Restaurant & Bar for the period from 1.7.2010 to 31.03.2011 and made a turnover of Rs.97,42,047/- which was inadvertently omitted to include in the return of income. The assessee has requested the AO to include the turnover of Rs.97,42,047/- and to make addition of Rs.2,97,828/- being the net profit relating to M/s Sai Durga Bar and Restaurant. However, the AO did not accept the explanation of the assessee and made the addition of Rs.1,18,33,227/- being the difference in the turnover admitted in the P&L

account and the turnover as per the information received by the AO from APBCL.

4. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) observed that the turnover of Mr.M.Nageswara Rao, Prop.M/s Sri Sai Durga Restaurant &Bar for the assessment year, as per the information submitted by APBCL was 1,14,84,877/-. The assessee claimed to have functioned as a proprietary concern from 1.7.2010 to 31.03.2011 and prior to this date it was functioned as AOP and there is a possibility of inclusion of purchases made during April 2010 to June 2010 in the hands of the assessee. The assessee has filed a copy of Profit & Loss account before the Ld.CIT(A) for the period from 1.4.2009 to 31.3.2010 in the status of the AOP, but, the assessee has not furnished any information as to the purchases made during the period from April 2010 to June 2010. The Ld.CIT(A) observed that there is a specific information provided by APBCL that the purchases made by Shri Sai Durga Bar and Restaurant, M.Nageswara Rao as proprietor was Rs.1,14,84,877/-. As regards estimation of income, the Ld.CIT(A) relied on the orders of the Coordinate Bench of ITAT Hyderabad in the case of M/s Mallikarjuna Bar & Restaurant in ITA No.186/Hyd/2012 dated

28.6.2012 and directed the AO to estimate the income @10% of purchases on 1,14,84,877/-.

5. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us. During the appeal hearing, the Ld.AR furnished the copies of Form 26AS in the case of the assessee and argued that the total purchases from APBCL was Rs.5,42,42,292/- which include the purchases made for Sri Sai Durga Bar and Restaurant. Since the turnover admitted in the Sri Durga Wines was Rs.4,46,22,154/- the turnover of Sai Durga Bar and Restaurant was Rs.97,42,047/-, hence requested to accept the turnover of Sri Sai Durga Bar & Restaurant at Rs.97,42,047 instead of Rs.1,14,84,877/- determined by the Ld.CIT(A). Per contra, the Ld.DR supported the order of the Ld.CIT(A).

6. We have heard both the parties and perused the material available on record. In this case, the AO stated that as per the information received from APBCL, the total liquor purchases made by the assessee was Rs.5,64,55,381/- and similarly, the Ld.CIT(A) also stated that as per the specific information provided by APBCL, the purchases made by Sri SaiDurga Bar & Restaurant, proprietor, M.Nageswara Rao was Rs.1,14,84,877/-, whereas the assessee furnished Form 26AS disclosing the

turnover of Rs.5,42,42,292/- and the difference would be Rs.97,42,047/-.

The Ld.DR could not place the information received from APBCL with regard to the purchases made by the assessee and also evidencing the purchases of Rs.1,14,84,877 by Sai Durga Restaurant Bar & Restaurant during the appeal hearing. Therefore, we are of the considered opinion that the issue needs to be remitted back to the file of the AO for further verification of correct amount of purchases. The AO is directed to furnish the specific information received from APBCL with regard to the purchases made by the assessee and also with regard to the purchases made by Sri Sai Durga Bar & Restaurant and determine correct turnover and re-determine the income as directed by the Ld.CIT(A) estimating the income @10% on turnover. It is needless to say that the specific information collected from the APBCL should be made available to the assessee for his explanation and reconciliation. The reasonable opportunity should be afforded to the assessee before the completion of the assessment proceedings. Accordingly, the order of the Ld.CIT(A) is set aside and the issue is remitted back to the file of the AO to redo the assessment as per the directions given above. . In the result, appeal of the assessee on this ground is allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purpose.

The above order was pronounced in the open court on 18th Apr, 2018.

Sd/-
(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 18 .04.2018

L.Rama, SPS

Sd/-
(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

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

1. अपीलार्थी / The Appellant- Mandava Nageswara Rao, D.No.30-13-11, Dabagardens, Visakhapatnam
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward-1(2), Visakhapatnam
3. The Commissioner of Income Tax, Vijayawada
4. The Commissioner of Income-Tax (Appeals), Vijayawada
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , विशाखापटणम / DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM