

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES
CIRCUIT BENCH "A", AT TIRUPATI**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

I.T.A. No. 1434/HYD/2016
Assessment Year: 2010-11

P. Harinath, CHITTOOR [PAN: ANRPP5824F]	Vs	The Income Tax Officer, Ward-1, CHITTOOR
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(Appellant)

(Respondent)

For Assessee	:	Shri S. Rama Rao, AR
For Revenue	:	Shri V. Rama Mohan, DR

Date of Hearing	:	15-05-2018
Date of Pronouncement	:	23-05-2018

ORDER

PER B. RAMAKOTAIAH, A.M. :

This is an appeal by assessee against the order of the Commissioner of Income Tax (Appeals)-Tirupati, dated 06-09-2016. The issue in this appeal is with reference to estimation of profit on turnover undertaken by assessee which was not disclosed in the return of income.

2. Briefly stated, assessee is a proprietor of business of sale of Tobacco products. He declared a turnover of Rs. 45,77,770/- and offered net profit at 5% on turnover at Rs. 2,28,889/-. It has come to the knowledge of AO that assessee has maintained 11 bank

accounts at various places and had deposits to an extent of Rs. 8,29,98,143/-. The assessment was reopened and in the course of reassessment, assessee submitted that he acted on behalf of M/s. Dhanapal Chetty & Co., Chittoor and he did not earn any profit. However, AO found that the said turnover was not owned up by the said firm and after excluding the accounted turnover of one bank account at Chittoor, AO estimated the profit at 5% on the turnover.

3. Before the Ld.CIT(A), assessee made detailed submissions and filed letter from M/s. Dhanapal Chetty & Co., Chittoor and submitted that he did the business on behalf of the above firm and withdrawals to an extent of Rs. 2,48,93,952/- were re-deposited, so that much has to be excluded. With reference to the profit, it was submitted that the profit declared by the said firm was at 0.06% and so the same can be adopted. In the alternate, it was submitted that the AO estimated the profit at 2.2% in AY. 2011-12 which was accepted by assessee in that year.

4. Ld.CIT(A) has partly accepted the contentions and held as under:

“5.1 As seen from the grounds one of the contentions of the appellant is that he made withdrawals and redeposited to the tune of Rs.2,48,93,952 and these amounts should not be considered as his turnover. I have carefully considered the contention of the appellant. There is no direct evidence to show that the deposits into the bank accounts were from the withdrawals. It is admitted fact that appellant deposited the trade receipts in the form of cash and also transferred cash to the wholesaler. In the process, in all probability the cash withdrawals relate to the payments made to M/s. Dhanapal Chetty & Co. who have extended their products to appellant for sale. This fact is also evident from the letter dated 23-03-2015 from the ITC distributor (M/s . Dhanapal Chetty & Co.) wherein the following is stated:

"We further declare that you remitted cash to us and sometimes by way of Demand draft in favour of ITC Ltd and the cash remitted from your end also was remitted to ITC in the form of Demand Draft only".

As seen from above the appellant was regularly remitting cash and Demand drafts to the distributor. If the appellant's contention is accepted, then there would be no cash payments to the wholesaler which is not true. Further part of the cash withdrawals could be for personal use. The onus is on the appellant to prove that the cash withdrawals were in fact fully or partly used for cash deposits. The appellant has clearly failed to establish any nexus. Hence, it is not possible to concede to the request of the appellant to give credit to the withdrawals. Accordingly, the contention that the withdrawn cash was redeposited has no merit the plea of the assessee is rejected.

5.2 The second contention is that the estimation of income @ 5.02% on the turnover is excessive. The appellant pleaded that as in comparable cases the income of the dealer should have been assessed @ 0.06%. During the appellate proceedings, the authorized representative argued that the estimate of income is on high side and totally unjustified. On 31.08.2016 the authorized representative filed additional grounds of statement of facts in support of the grounds of statement of facts in support of the grounds of appeal, wherein it is contended that for assessment year 2011-12 the AO estimated the income @2.2% on the turnover on similar facts and accordingly the estimation @5.02% is excessive.

The contention of the appellant is considered. It is a fact that net profit @2.2% is estimated by the AO in the assessee's own case for the assessment year 2011-12. Considering this estimation @5.02% is excessive and unreasonable in this line of business. Accordingly estimation of net profit @ 3% would be fair and reasonable. Accordingly the net profit may be reworked at Rs.23,72,780/-. Consequentially the appellant gets a relief of Rs.15,97,670/-".

5. Ld.AR reiterated the submissions made before the CIT(A) and Ld.DR relied on the order of the Ld.CIT(A).

6. After considering the rival contentions, we are of the opinion that the turnover belongs to assessee business. M/s. Dhanapal Chetty & Co., Chittoor confirmed that assessee was doing business as consignment agent. Assessee also accepted similar estimation of income in later AY. 2011-12. Therefore, the findings of the

Ld.CIT(A) on turnover are upheld. Coming to the estimation of income, Ld.CIT(A) has reduced the estimation from 5% to 3%, whereas assessee submission was that the profit in later year was estimated at 2.2% by AO. The rate of 0.06% relied on by Ld. Counsel has no merit. Since the rate of 2.2% was accepted by assessee in later year, we direct the AO to adopt the same. Order of the CIT(A) is modified to that extent.

7. In the result, appeal of assessee is partly allowed.

Order pronounced in the open court on 23rd May, 2018

Sd/-

(D. MANMOHAN)
VICE PRESIDENT

Hyderabad, Dated 23rd May, 2018

TNMM

Sd/-

(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

Copy to :

1. Shri P. Harinath, C/o. M/s. KGM Gupta & Co., Chartered Accountants, 10/67, Gandhi Road, Chittoor.

2. The Income Tax Officer, Ward-1, Chittoor.

3. CIT(Appeals)-Tirupati.

4. Pr.CIT-Tirupati.

5. D.R. ITAT, Hyderabad.

6. Guard File.