

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

I.T.A. No. 1873/HYD/2017

Assessment Year: 2012-13

Sri Manne Baswa Reddy, Income Tax Officer,
HYDERABAD Vs Ward-9(1),
[PAN: AIPPM0116Q] HYDERABAD

(Appellant)

(Respondent)

For Assessee : Shri A. Srinivas, AR
For Revenue : Shri M. Sitharam, DR

Date of Hearing : 24-05-2018
Date of Pronouncement : 08-06-2018

ORDER

PER B. RAMAKOTAIAH, A.M. :

This is an appeal by assessee against the order of the Commissioner of Income Tax (Appeals)-7, Hyderabad, dated 02-08-2017. Assessee is aggrieved on estimation of income in the liquor business as well as sustaining addition of Rs. 1,60,000/- u/s. 68 of the Income Tax Act [Act].

2. Briefly stated, assessee is an individual deriving income from retain trading in IMFL under the trade name of M/s. Sri Durga Wines. Assessee's books of account were rejected and income was estimated at 5% on the liquor put to sale.

3. Ld.CIT(A) after considering the submissions of assessee and various case law relied upon, considered the location of the business and determined the net profit at 4.5% of cost of goods sold as reasonable profit.

4. It was the submission that ITAT is confirming the estimation of income at 3% and requested for estimation of income at 3% and relied on the case of Shri Sridhar Ramagiri Vs. ITO in ITA No. 1924/Hyd/2017, dt. 23-05-2018.

5. After considering the rival contentions, we are of the opinion that income can be estimated at 3% on cost of goods sold on the basis of Co-ordinate Bench decision in the case of Shri Sridhar Ramagiri Vs. ITO (supra), where in it was held as under:

"5. Having regard to the rival contentions and the material on record, we find that this Tribunal, in the case of Secunderabad Wines (supra) vide orders dated 20.07.2016 (to which both of us are signatories) have held 3% of the cost of goods put to sale to be reasonable estimation of income. For the sake of clarity and ready reference, relevant paragraphs are reproduced hereunder:

"2. Brief facts of the case are that the assessee-firm which is in the business of wholesale and retail sale of liquor, filed its return of income for the AY. 2011-2012 on 28.09.2011 admitting income of Rs. 52,25,566. The assessment proceedings under section 143(3) read with

section 147 of the Act were initiated and during the said assessment proceedings after verification of various details filed by the assessee, the A O. found that the assessee has offered low gross profit of 11.01% as against the gross profit margin of retail at 24% as per the G.O.Ms. issued by the Government of AP. The assessee submitted that the gross profit margin of 24% as per G.O. of Government of AP. is absolutely on the higher side. The Ld. AR. contended that in majority of the similar liquor cases, the 1TAT, Hyderabad Bench has been taking the totality of the facts into consideration and holding that the total income of the assessee shall be 3 to 5% of the goods put to sale and that the same has been upheld by the Hon'ble High Court of AP. The A.O. however, observed that the Hon'ble AP. High Court in the case of CIT vs. Kamlekar Shankar Lal in ITTANo.21 of 2013 dated 23.07.2013 has estimated the net profit at 5% of the purchase or stock put to sale. He therefore, estimated the income at 5% of the goods put to sale and brought it to tax. Similarly, he also made an addition of miscellaneous receipts of Rs.3,39,064. Aggrieved, assessee preferred an appeal before the CIT(A) who confirmed the order of the A.O. and the assessee is in second appeal before us.

3. At the time of hearing, Ld. Counsel for the assessee submitted that this issue is covered in favour of the assessee by the decision of 'A' Bench of this Tribunal in the case of Sri Venkateswara Wines in ITA No. 1206/Hyd/2015 dated 27.11.2015 for the AY. 2011-2012 wherein after taking into consideration similar circumstances the Tribunal has upheld the estimation of income at 3% of the cost of the goods sold. Respectfully following the same, to which both of us are signatories, we direct the A.O. to adopt 3% of the cost of goods sold as the income of the assessee. The Ld. Counsel for the assessee did not argue ground Nos. 4 and 5 and therefore, the same are rejected as not pressed”.

5.1. Respectfully following the same, we direct the AO to consider 3% of the income of assessee subject to the above amount not being less than the profit already disclosed by assessee. In that event, the income disclosed by assessee should be accepted.

6. The other issue contested is about addition of Rs. 1,60,000/-. AO found that assessee has maintained the bank account with Andhra Bank and during the period from 01-04-2011 to 31-03-2012, Rs. 1,60,000/- was found to be deposited by assessee. AO was of the opinion that the said bank account does not appear to be used for IMFL business and assessee was asked to explain the sources for cash deposits made. In the absence of any reply, the amount was treated as 'unexplained cash deposit'. It was submitted before the CIT(A) that the amount also pertains to assessee and deposits are out of known sources of income. Ld.CIT(A), however, rejected the contentions, stating that assessee has not proved that the bank account also pertains to business.

6.1. After considering the rival contentions, we are of the opinion that the confirmation by the CIT(A) is not proper whether the account is used for business purposes or not. The deposits in the bank account pertain to assessee. Assessee had substantial income during the year and that too he is doing retain business in IMFL. There is no allegation that these amounts also pertain to the business by the AO. Since the deposits are through-out the year in small amounts and since the corresponding credits in the books of account are not verified by the AO and the books of account having been rejected, we are of the opinion that the deposits can be telescoped to the income estimated on the business. In view of that we are of the opinion that the deposits in the bank account need not be separately assessed, when income was

estimated more than what assessee has disclosed. In view of that, we direct the AO to delete the addition.

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

Order pronounced in the open court on 8th June, 2018

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 8th June, 2018

TNMM

Copy to :

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2. Income Tax Officer, Ward-9(1), Hyderabad.

3. CIT(Appeals)-7, Hyderabad.

4. Pr.CIT-7, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.