

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. Nos.122-124/Coch/2018
Assessment Years : 2012-13 to 2014-15

M/s. Kanjirapally Hotels, Kanjirpally P.O., Kottayam-686 507. [PAN: AAJFK 7653E]	Vs.	The Assistant Commissioner of Income-tax, Central Circle-1, Kochi.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri Mathew Joseph, CA
Revenue by	Shri Shantham Bose, CIT(DR)

Date of hearing	06/09/2018
Date of pronouncement	10/09/2018

ORDER

Per CHANDRA POOJARI, AM:

These appeals filed by the assessee are directed against the common order of the CIT(A)-III, Kochi dated 14/02/2018 and pertains to the assessment years 2012-13, 2013-14 and 2014-15. Since the issues involved in these appeals are common, they were heard together and are being disposed of by this common and consolidated order.

2. The first common ground in all these appeals is with regard to estimation of GP on restaurant sales at 14.58% for the assessment year 2012-13, 12.02% for

the assessment year 2013-14 and 10.42% for the assessment year 2014-15 which was confirmed by the CIT(A).

3. The facts of the case are that a search was conducted on Elegance group of Hotels on 03/02/2015 and the assessee was also covered in that search. During the course of search, incriminating documents were found and seized, evidencing suppression of sales. The seized documents relates to actual sales made by the assessee which totaled upto 5,87,85,814/- and out of this, liquor sales only was worked out at Rs.5,48,04,086/- and the balance was other food items including soft drink and soda etc. Since the purchase price is fixed and known and sale figures werw available for the period 01/04/2014 to 03/02/2015, the Assessing Officer worked out the GP earned at 127%. The Assessing Officer worked out GP on daily basis for a few days and concluded that the GP is 118%. Therefore, he applied the GP on cost of liquor sold as per return of income and worked out the estimated sales for AYs 2011-12 to 2014-15. The difference between the estimated sales and declared sales was treated as undisclosed income.

4. Before the CIT(A), the Ld. AR submitted that the GP rate adopted by the Assessing Officer was on a higher side. The Assessing Officer had estimated food sales in the same proportion and has erroneously applied 118% GP rate on food sales also. The ITAT had fixed the rate of 6.32% on food sale on the basis of seized material in the case of Deepak Narendran. It was submitted that the

actual expenditure on staff and maintenance was much higher than the recorded. The assessee worked out the difference in actual salary and salary expenses claimed at Rs.32,01,252/-, Rs.36,13,519/- and Rs.36,80,307/- for AYs 2012-13, 2013-14 and 2014-15 respectively. It was submitted that since the estimated income was computed as undisclosed income, credit for unrecorded expenditure should also be given in computing the net unaccounted income. It was submitted that the Assessing Officer had allowed substantial portion of unrecorded expenses based on the investigation report in the case of M/s. Arya Residency and the CIT(A) in the case of Deepak Narendran and Hotel Mareen, the CIT(A) had also allowed the additional salary claimed by the assessee in the revised return.

5. The CIT(A) observed that the Assessing Officer was not justified in adopting the rate of 118% for AY 2011-12 to AY 2014-15, when the assessee had to face competition from other bars. The Assessing Officer was also not justified in not giving credit for unrecorded but actual expenditure made on wages and maintenance while computing the total undisclosed income. By relying on the decision of the Cochin Bench of the Tribunal in the case of Deepak Narendran vs. DCIT in ITA Nos. 388 to 393/Coch/2016 dated 25/05/2017 wherein the facts are identical to the present case, the CIT(A) adopted the GP rates at 80%, 83%, 86% and 90% for the assessment years 2011-12 to 2014-15 and held that when the lower GP rate is applied, it is presumed that credit has been given for all

unrecorded expenses, and all the objections of the assessee are redressed. The CIT(A) directed the Assessing Officer to give credit for voluntary disclosure of Rs.29,10,000/-. The average gross profit as per the statement till the date of search was 121.19% against which the assessee had declared a gross profit of 123%. Taking the overall view of the circumstances, the CIT(A) adopted a GP rate of 125% to meet the ends of justice.

6. Against this, the assessee is on appeal before us. The Ld. AR submitted that estimation of GP on restaurant sales by the CIT(A) at 14.58%, 12.02% and 10.42% for the assessment years 2012-13, 2013-14 & 2014-15 respectively is on a higher side. According to the Ld. AR, the assessee offered discount to the regular customers at 20% which was not considered by the CIT(A).

7. On the other hand, the Ld. DR submitted that the CIT(A) followed the order of the Cochin Bench of the Tribunal in the case of Deepak Narendran vs. DCIT in ITA Nos. 388 to 393/Coch/2016 dated 25/05/2017 wherein the GP rate was fixed as follows:

<u>AY</u>	<u>GP Rate</u>
2006-07	65%
2007-08	65%
2008-09	71%
2009-10	78%
2010-11	80%
2011-12	80%

Accordingly, the CIT(A) worked out the GP rate on liquor sales on the basis of the above order of the Tribunal as follows:

<u>AY</u>	<u>G.P. Rate</u>
2011-12	80%
2012-13	83%
2013-14	86%
2014-15	90%

Therefore, it was submitted that there cannot be any grievance to the assessee on this issue.

8. We have heard the rival submissions and perused the record. The CIT(A) has taken the GP rate on the basis of the earlier order of the Tribunal in the case of Deepak Narendran (supra) wherein the Tribunal fixed the GP rate on liquor sales as follows:

"31. To summarize, we direct the Assessing Officer to consider the GP on sale of liquor from Narendra Regency for AY 2007-08, 2008-09 and 2009-10 at 64%, 70% and 76% respectively. For Cherthala House, for AY 2006-07 and 2007-08 GP rate has to be taken at 65% for AY 2008-09 at 71% and for AY 2009-10 at 78%. For Narendra Central, we direct the Assessing Officer to consider GP at 80% for AY 2011-12. For all other years, estimation of profit from liquor sales as determined by the Id CIT(A) will stand undisturbed in so far as the sale of food and soda are concerned, we direct the Assessing Officer to adopt the GP rate of 6.32% and 58% respectively for all the hotels, for all the years."

8.1. Accordingly, we do not find any infirmity in the order of the CIT(A) to adopt 83%, 86% and 90% for the assessment years 2012-13, 2013-14 and 2014-15 respectively. This ground of appeal of the assessee is rejected.

9. The next common ground is with regard to non granting of deduction actual expenses incurred by the assessee to earn the income.

10. The Ld. AR submitted that the assessee had raised this issue before the CIT(A), claiming deduction towards actual expenses which was to be given out of the unaccounted estimated income. However, the same was overlooked by the CIT(A), though he has observed in pg. 19 as follows:

"Thus taking an overall view of the situation, in my opinion, the Assessing Officer was not justified in adopting the rate of 118% for AY 2011-12 to AY 2014-15, when the assessee had to face competition from other Bars. The Assessing Officer was also not justified in not giving credit for unrecorded but actual expenditure made on wages and maintenance while computing the total undisclosed income."

11. The Ld. DR submitted that the CIT(A) redressed this ground by observing in page no. 20 of his order as under:

"When this lower GP rate is applied, it is presumed that credit has been given for all unrecorded expenses, and all the objections of the assessee are redressed."

12. The Ld. DR submitted that the assessee cannot claim any further expenses out of the estimated income. In reply, the Ld. AR submitted that in the case cited supra relied upon by the CIT(A), the Assessing Officer had himself given deduction towards the unrecorded actual expenses. Hence, being in parity with assessee's case, this shall also be given deduction towards the unrecorded actual expenses.

13. We have heard the rival submissions and perused the record. In our opinion, if in the case of Deepak Narendran, cited supra, the Assessing Officer had himself given deduction towards the unrecorded actual expenses out of the estimated income from sales, correspondingly, the assessee should also be given deduction towards the unrecorded actual expenses. Further, the CIT(A) while relying on the decision of the Tribunal in the case of Deepak Narendran (supra) observed in pg. 19 as follows:

"Thus taking an overall view of the situation, in my opinion, the Assessing Officer was not justified in adopting the rate of 118% for AY 2011-12 to AY 2014-15, when the assessee had to face competition from other Bars. The Assessing Officer was also not justified in not giving credit for unrecorded but actual expenditure made on wages and maintenance while computing the total undisclosed income."

13.1 Further, while relying on the decision of the Tribunal in the case of Deepak Narendran (supra), the CIT(A) observed in page 19 (in last paragraph) as follows:

"Hon'ble Jurisdictional ITAT, Cochin Bench has passed an exhaustive order in the case of Deepak Narendran. Facts and circumstances are identical in the instant case. Hon'ble ITAT, Cochin Bench has passed an exhaustive order in the case of Deepak Narendran. Facts and circumstances are identical in the instant case. Hon'ble ITAT, in its order, has directed the AO to consider GP at the rate of 80% for AY 2011-12 in the case of Hotel Narendra Central. In the earlier years, the Hon'ble ITAT directed to adopt rates at 78%, 76%. In its submission, the appellant has also accepted that during years 2010-11 onwards, the bars in the area were selling liquor at a GP margin of 75 to 90%%."

13.2 Further, the CIT(A) observed in pg. 20 as follows:

"When this lower GP rate is applied, it is presumed that credit has been given for all unrecorded expenses, and all the objections of the assessee are redressed. The A.O. is further directed to give credit for voluntary disclosure of Rs.29,10,000/- given in AY 2013-14".

13.3. Thus, we find that these findings of the CIT(A) were contrary to each other. Hence, we direct the CIT(A) to examine the issue afresh after going through the assessment order in the case of Deepak Narendran to verify whether Assessing Officer has given any deduction towards unrecorded actual expenses or not and decide accordingly. This ground of appeal of the assessee is allowed for statistical purposes.

14. The next ground in ITA No. 123/Coch/2018 is with regard to making of separate addition of Rs.29.1 lakhs which was offered by the assessee as additional income even after making the GP addition by the Assessing Officer.

15. This ground of the assessee is misconceived as the CIT(A) has already given direction to the AO to give credit for voluntary disclosure of Rs.29.1 lakhs by the assessee in this assessment year 2013-14 as seen from page 20 of his order by observing as follows:

"The AO is further directed to give credit for voluntary disclosure of Rs.29,10,000/- given in AY 2013-14."

Thus, this ground of appeal of the assessee is dismissed.

16. The next ground in ITA No.124/Coch/2018 is with regard to making of separate addition of Rs. 3 lakhs even after making the GP addition by the Assessing Officer.

17. We have heard the rival submissions and perused the record. We find that this grievance of the assessee is justified as the order of the CIT(A) is silent on this issue. He should have given findings on this issue as in the assessment year 2012-13. Rs.3 lakhs while completing the assessment. In view of the above, we remit this issue to the file of the CIT(A) to consider afresh. This ground of appeal of the assessee is allowed for statistical purposes.

18. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on this 10th September, 2018.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 10th September, 2018

GJ

Copy to:

1. M/s. Kanjirapally Hotels, Kanjirpally P.O., Kottayam-686 507.
2. The Assistant Commissioner of Income-tax, Central Circle-1, Kochi.
3. The Commissioner of Income-tax(Appeals-III, Kochi.
4. The Commissioner of Income-tax, Central, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin