

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 473/Hyd/2018  
Assessment Year: 2013-14**

K. Mallaiah Rajender Kumar, vs. Income-tax Officer, Ward – 1,  
Sangareddy. Siddipet.

PAN – AMRPK 8302 Q

(Appellant)

(Respondent)

Assessee by : Shri S. Rama Rao  
Revenue by : Shri Nilanjan Dey

Date of hearing : 23/10/2018  
Date of pronouncement : 31/10/2018

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.:**

This appeal filed by the assessee is directed against the order dated 21/11/2017 of CIT(A) – 7, Hyderabad for AY 2013-14.

2. The assessee filed this appeal with a delay of 36 days. To this effect, assessee filed a petition for condonation as well as an affidavit wherein it was stated that during the relevant point of time he fell sick due to grade 3 syndesmotomic injury to right ankle and was advised rest. In this connection, he filed a Doctor's Certificate from Jyothi Multi Special Hospital. Further, it was stated that the delay was for the reasons beyond its control and is not intentional, therefore, the delay may be condoned. Considering the submissions of the assessee and the objection of the Id. DR, we hereby condone the delay as the assessee was prevented by reasonable cause in not filing the appeal within the stipulated time and the appeal is admitted for hearing and adjudication.

3. Briefly the facts of the case are, the assessee, an individual, carrying on retail business of liquor, filed his return of income for AY 2013-14 on 27/08/2013, admitting total income at Rs. 8,90,130/-. Subsequently, the case was selected for scrutiny and notices u/s 143(2) and 142(1) of the Income-tax Act, 1961 (in short 'the Act') were issued and served on the assessee. The AO completed the assessment u/s 143(3) of the Act on 22/03/2016 by determining total income at Rs. 32,48,810/- which includes addition/estimation of Rs. 22,84,030/- as income from wine business and disallowance of Rs. 12,250/- towards agricultural income.

4. When the assessee preferred an appeal before the CIT(A), the CIT(A) dismissed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

*"1) The order of the learned Commissioner of Income-tax (Appeals) is erroneous both on facts and in law.*

*2) The learned Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in rejecting the books of account and in estimating the net income at 5% of the cost of sales effected during the previous year.*

*3) The learned Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs.12,250/- made by the Assessing Officer disbelieving the agricultural income.*

*4) Any other ground or grounds that may be urged at the time of hearing."*

6. Ground Nos. 1 & 4 are general in nature, hence, need no adjudication.

7. As regards ground No. 2, the AO observed that when the assessee was asked to submit the books of account, sales invoice/documentary evidence in support of his claim of sales below MRP fixed by the government and bills/vouchers for the expenses

claimed under different heads and other information, the assessee failed to submit the same. He, therefore, estimated the net profit @ 5% of the cost of purchases put for sale from the business of income, which was confirmed by the CIT(A).

8. Considered the rival submissions and perused the material on record. The coordinate benches of this Tribunal consistently taking view that estimation of income at 3% of the cost of the goods sold is reasonable in this line of business. In the case of Sri Venkateswara Wines in ITA No. 1206/Hyd/2015, dated 27/11/2015 for AY 2011-12, the coordinate bench has held as under:

*"5. Having regard to the rival contentions and the material on record, we find that the assessee has not maintained any books of account and therefore, the estimation of income is justified. It is only the rate at which the income is to be estimated is before us. A.O. has estimated the income at 5% of the cost of goods sold, while the assessee is seeking the estimation at 3% of the cost of goods sold. We find that in the case of Venkateswara Wines, Nizamabad (supra), the Coordinate Bench of this Tribunal has taken note of the decision of Hon'ble High Court of Telangana and Andhra Pradesh in ITA.No.1198/Hyd/2015 Sai Venkateswara Wines, Secunderabad the case of CIT vs. Kamlekar Shankar Lal (supra) to hold as under :*

*"6. Having regard to the rival contentions and the material on record, we find that the AO has called for books of account of the assessee but the assessee had failed to produce the same. Therefore, AO had estimated the income of the assessee at 2.5% of the turnover. The CIT wants the same to be estimated at 5% of the total turnover because the Tribunal in the case of an assessee carrying on the same business of sale of IMFL has estimated the income at 5% of the turnover. This, in our view, is not justified as held by the Coordinate Bench of this Tribunal. The uniform net profit cannot be adopted in each and every case of similar business. Estimation of net profit must be on the basis of facts involved in each and every case. Therefore, in our view, there is no error committed by the AU in estimating the profit at 2.5% of the total turnover. Thus grounds of appeal No.2 & 3 are allowed."*

Therefore, we direct the AO to adopt 3% of the cost of goods sold as the income of the assessee. Accordingly, ground No. 2 is partly allowed.

9. With regard to ground No. 3, Id. AR of the assessee has not made any submission, accordingly, this ground is treated as not pressed and the same is dismissed.

10. Ground Nos. 1 & 4 are general in nature.

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

Pronounced in the open Court on 31<sup>st</sup> October, 2018.

**Sd/-**  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 31<sup>st</sup> October, 2018

*kv*

Copy to:-

- 1) *Shri K. Mallaiah Rajender Kumar, Sai Krishna Residency, Veerabhadra Nagar, Near New Bus Stand, Sangareddy – 502 001*
- 2) *ITO, Ward – 1, Rajiv Rahadari Road, Siddipet – 502 277*
- 3) *CIT(A) – 7 Hyderabad.*
- 4) *Pr. CIT - 7, Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*