

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

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

**ITA No. 1339/Hyd/2018
Assessment Year: 2014-15**

Nagaraju Kongara, Warangal vs. Income-tax Officer, Ward – 4,
Warangal.

PAN – AOXPk 6424K

(Appellant)

(Respondent)

Assessee by : Shri K.C. Devdas
Revenue by : Shri R.S. Arvindakshin

Date of hearing : 31/10/2018
Date of pronouncement : 15/11/2018

ORDER

PER S. RIFAUH RAHMAN, A.M.:

This appeal filed by the assessee is directed against the order of CIT(A) – 3, Hyderabad dated 09/04/2018 for AY 2014-15.

2. Briefly the facts of the case are, the assessee, an individual carrying on trading in liquor in the capacity as a proprietor in the name of M/s Kaveri Wines, Warangal, filed return of income for the AY 2014-15, declaring total income of Rs. 7,27,920/-. The case was selected for scrutiny and the AR of the assessee furnished the details. The AO rejected the books of accounts of assessee and estimated the profit at 5% on purchases and accordingly total income was computed at Rs. 28,15,709/- as against the income declared by the assessee at Rs. 7,27,920/-. AO relied on the decision of ITO Vs. Sri Amaravathi Wine Shop vide ITA No. 1196/Hyd/2011, dated 08/06/2012.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) confirmed the order of AO.

4. 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 Hon'ble CIT(A) is erroneous in law as well as facts of the case.

2. The Hon'ble CIT(A) ought to have held that the action of the assessing officer with regard to rejection of account books as illegal, improper and without bringing any material on record.

3. The Hon'ble CIT(A) ought to have observed that the assessee maintained regular account books and vouchers and filed audited financial statements along with return of income and therefore the assessing officer ought not to have rejected the book results declared.

4. The Hon'ble CIT(A) ought to have observed that estimation of profit at 5% in respect of IMFL business was injudicious and illegal and therefore ought to have accepted the book results declared by the assessee.

5. Any other ground will be raised at the time of hearing."

5. Considered the rival submissions and perused the material on record. The coordinate benches of this Tribunal consistently taking a 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 of liquor sold as the income of the assessee. Accordingly, ground No. 4 is partly allowed. Ground Nos. 1 & 5 are general in nature. Ground Nos. 2 & 3 are not pressed at the time of hearing, hence, the same are dismissed as not pressed.

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

Pronounced in the open Court on 15th November, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 15th November, 2018

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Copy to:-

- 1) Shri Nagaraju Kongara, C/o B. Narsing Rao & Co., CAs., Plot No. 554, Road No. 92, Jubilee Hills, Hyd. – 96
- 2) ITO, Ward – 4, Warangal.
- 3) CIT(A) – 3 Hyderabad.
- 4) Pr. CIT - 3, Hyd.
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File