

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

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

	ITA No.131/Hyd/2018		
	Assessment Year: 2014-15		
Prakash Bhramla Palli, Hyderabad. PAN: AISP B 8110 C	Vs.	ITO, Ward-10(5), Hyderabad.	
(Appellant)		(Respondent)	
	Assessee by:	Sri S. Rama Rao	
	Revenue by:	Sri Y.V.S.T. Sai, CIT-DR	
	Date of hearing:	05.11.2018	
	Date of pronouncement:	15.11.2018	

ORDER

PER Smt. P. Madhavi Devi, J.M.:

This is assessee's appeal for the assessment year 2014-15 against the order of the CIT(A)-6, Hyderabad dated 24.10.2017. The assessee has raised the following grounds of appeal:-

1. *The order of the Ld. CIT(A) is erroneous both on facts and in law.*
2. *The Ld. CIT(A) erred in confirming the action of the Assessing Officer in rejecting the books of account and in resorting to estimation of income tax at 5% of the cost of goods sold or at Rs. 26,67,343/-.*
3. *The Ld. CIT(A) erred in confirming the action of the Assessing Officer in separately adding Rs. 66,900/- being the miscellaneous income particularly when the income is determined by estimation.*
4. *The Ld. CIT(A) erred in confirming levy of interest u/s 234B of the IT Act."*

2. At the time of hearing, Learned Counsel for the Assessee submitted that the issue involved in this appeal is covered in favour of the assessee by the decision of this Tribunal in a

number of cases, wherein the Tribunal has estimated the profit from sale of liquor @ 3% of the stock put to sale. He therefore prayed that similar direction may be given to the A.O.

3. As regards the Ground no.2, it is submitted that since a sum of Rs. 26,67,343/- was estimated by the A.O as assessee's business income and since the income of Rs. 66,900/- from miscellaneous sources is linked with the business of the assessee, separate addition need not be made.

4. Learned Departmental Representative, however, supported the orders of the authorities below.

5. Having regard to the rival contentions and the material on record, we find that the assessee is involved in retail business of liquor and is not maintaining any books of account. Therefore, A.O. has estimated the income @ 5% of the cost of goods put to sale and the CIT(A) has confirmed the same. In similar circumstances, this Tribunal, in the case of Sri Venkateswara Wines, Secunderabad in ITA No.1206/Hyd/2015 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 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 ITA.No.1206/Hyd/2015 Sai Venkateswara Wines, Secunderabad 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."

5.1. In the case before us, the assessee is agreeable to the estimation of income at 3% of the cost of goods sold. As the facts before us are similar to the facts before the Tribunal in the case of Venkateswara Wines, Nizamabad (supra) and the uniform rate of profit cannot be adopted in the case of every assessee in similar business, we allow ground No.2 of the assessee".

6. Respectfully following the decision of the Coordinate Bench (to which both of us are signatories), the AO is directed to estimate the net profit at 3% of the cost of goods put to sale. Accordingly, Ground no.2 is allowed.

7. As regards, Ground no.3, Learned Counsel for the Assessee agreed for the addition due to smallness of the amount involved. Therefore, Ground no.3 is rejected.

8. Ground no.4 is against the levy of interest u/s 234B of the Act. The Assessing Officer is directed to give consequential relief, if any, to the assessee.

9. In the result, assessee's appeal is partly allowed.

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

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated:15th November, 2018

OKK

Copy to:-

1)	B. Prakash Goud, 1-5-568, Waddera Basthi, Tukaram Gate, Secunderabad.
2)	Income Tax Officer, Ward-10(5), Income Tax Towers, AC Guards, Hyderabad.
3)	The CIT(A)-6, Hyderabad
4)	The Pr. CIT-6, Hyderabad
5)	The DR, ITAT, Hyderabad
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