

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

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

**ITA No. 665/Hyd/2018  
Assessment Year: 2014-15**

Andhra Pradesh Beverages Corporation Limited, Hyderabad. PAN: AABCA 7385 A (Appellant)	Vs.	DCIT, Circle-1(1), Hyderabad. (Respondent)
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**ITA No.878/Hyd/2018  
Assessment Year: 2014-15**

JCIT (OSD), Range-1, Hyderabad.	Vs.	Andhra Pradesh Beverages Corporation Limited, Hyderabad. PAN: AABCA 7385 A Assessee by: Sri Y. Ratnakar Revenue by: Smt. S. Narasamma, DR
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Date of hearing: 31.10.2018  
Date of pronouncement: 29.01.2019

**ORDER**

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

Both the appeals are cross appeals for the assessment year 2014-15 against the order of the CIT(A)-1, Hyderabad dated 22.12.2017. In its appeal (ITA No.665/Hyd/2018), the assessee has raised the following grounds of appeal:

1. *"The order of the learned Commissioner of Income tax(Appeals)-I, Hyd dt 22-12-2017 is contrary to law and facts.*
2. *The appellant contends that the learned Commissioner of Income Tax (Appeals) erred in confirming the order of the learned Dy. Commissioner of income tax, Circle-1(l), Hyd. upholding the addition of Rs.703,60,39,064/-.*

3. The appellant contends that the following additions to the income returned confirmed by the learned Commissioner of Income tax (A) 1 are erroneous:

Privilege fees	Rs. 271,62,84,789
Spl. privilege fees for sports promotion	Rs. 25,00,00,000
Additional privilege fees	Rs. 429,23,75,131
Leave encashment disallowance	Rs. 8,42,385
PF, SF, GF & other fund disallowance	<u>Rs. 15,36,759</u>
	<u>Rs. 703,60,39,064</u>

4. The appellant contends that during the financial year 2013-14 relevant to the assessment year 2014-15, the entire wholesale trade in liquor was carried on by the State of Andhra Pradesh and not by the appellant corporation. The Ld. A.O. and the CIT(A) erred in assuming that the wholesale trade was carried on by the appellant corporation and thereby disallowing the privilege fees by applying the provisions of section 40(a)(iib) of the IT Act which are put on the statue book effective from the assessment year 2014-15.
5. The appellant contends that it did not carry on any wholesale trade in liquor. The appellant did not pay any privilege fees to the State Government in relation to the wholesale trade carried on by the State Government.
6. It is contended that the Ld DCIT as well as the Ld. CIT(A) erred in ignoring that the factual position prevailing in the financial 2013-14 relevant to the assessment year 2014-15 which was different from the earlier years where the corporation carried on the wholesale trade in liquor.
7. The appellant contends that the provisions of section 40(a)(iib) are not attracted because there was no privilege fees levied on the corporation exclusively and the privilege fees was paid by about 9000 licensees as a part of the sale price of liquor to the State Government for the stocks purchased by them and recovered from their customers. In the facts and circumstances of the case, the provisions of section 40(a)(iib) of the IT Act are inapplicable and the additions made are erroneous.
8. without prejudice to the above submissions, it is contended that the addition of privilege fees of Rs. 429,23,75,131/- is a double addition and in any event has to be deleted.
9. It is contended that the Ld. CIT(A) was in error in confirming the order of the A.O. that the stocks sold and the amounts directly collected by the State of Andhra Pradesh from the retailers are the business receipts of the appellant corporation. The appellant is taxed on the amounts which never belonged to it but were the sales of the AP Govt.
10. The appellant contends that the Ld. CIT(A) erred in not dealing with the following evidence filed along with the submissions in writing in the course of appeal proceedings.
- Letter from the Commissioner of Prohibition & Excise, Govt. of Andhra Pradesh, dt 3.10.2017.
  - Letter dt 16.10.2017 from the Special Secretary, Govt of AP addressed to the CIT(A)-1, Hyderabad.
  - Affidavit dt. 1.11.2017 signed by the Managing Director, APBCL (holding DGP rank)
  - P.D. Account (Bank Account) of the Commissioner of Prohibition & Excise;
  - Bank account of APBCL for the financial year 2013-14
  - Certificate of remittances made from the PD Account of the Commissioner of Prohibition & Excise.
  - Petition dt 23.10.2017 dt 10.11.2017 filed under Rule 46a of the IT Rules for admission of additional evidence listing out various letters and documents.

- h) *Remand report of the DCIT, dt 24.11.2017 in respect of the petitions filed under Rule 46A.*
- i) *Letter dt 5.12.2017 addressed by the Commissioner of Prohibition & Excise to the Commissioner of Income Tax (Appeals)-1, Hyderabad.*
11. *The appellant submits that the appellate order contains numerous errors on the factual aspects and also from the language point of view sometime altering the meaning. It is contended that the letter dt 03.04.2018 filed before the Ld. CIT(A) for rectification of the appellate order and also for correction of errors may be treated as a part of the present appeal.*
12. *It is contended that the Ld. CIT(A) erred in ignoring the petitions filed under Rule 46A of the IT Rules dt 23.10.2017 and 10.11.2017 for admission of additional evidence.*
13. *The Ld. CIT(A) erred in ignoring the remand report of the DCIT and Addl CIT dt 24.11.2017 while passing the appellate order.*
14. *The Ld. CIT(A) erred in omitting all the submissions made in writing before her and filed on 23.10.2017, 3.11.2017, 10.11.2017, 21.10.2017, 29.11.2017, 8.12.2017 and 18.12.2017 while confirming the assessment order.*
15. *The appellate order is erroneous as it suffers from non-application of mind and omission to refer to the relevant submissions which are material for the purpose of deciding the issue while disposing of the appeal.*
16. *The appellant contends that the income declared by the appellant at Rs. 23,79,28,420/- is correct and the remaining additions made deserve to be deleted.*
17. *It is contended that the following disallowances made are also incorrect and erroneous.*
- |    |  |                          |
|----|--|--------------------------|
| a) | <i>Disallowance towards leave encashment</i> | <i>Rs. 8,42,385/-</i>    |
| b) | <i>Disallowance towards leave encashment</i> | <i>Rs. 15,36,759/-."</i> |

2. Brief facts of the case are that the assessee-corporation filed its return of income for the A.Y 2014-15 on 2011.2014 declaring total income of Rs. 23,79,28,520/- under the normal provisions of Income Tax Act, 1961 and book profits of Rs. 23,77,77,092/- u/s 115JB of the Act. During the assessment proceedings u/s 143(3) of the Act, the Assessing Officer observed that the assessee is the sole wholesale distributor of alcoholic products in the State of Andhra Pradesh and on perusal of Annual Report of the assessee for the A.Y. 2014-15, he observed that the assessee-company has not admitted any income from wholesale distribution of MFL and FL but admitted turnover of Rs. 123,21,24,691/- which includes Rs. 57,57,82,518/- from sale proceeds from retail outlets, income from cash discounts of Rs. 56,63,38,350/- and other income of Rs. 9,00,03,823/-. He therefore, asked the assessee, to explain as to why income from main business activity of

carrying on wholesale trade and distribution of IMFL, Foreign Liquor, wine and beer on behalf of Government of Andhra Pradesh for the FY 2013-14 relevant to A.Y. 2014-15 was not offered to tax. The assessee vide explanations dated 14/11/2016, 24/11/2016, 28/11/2016, 14/12/2016, 21/12/2016 and 24/12/2016 submitted that it is the State Government which is procuring the material from the manufacturers and is supplying the same to the vendors through the assessee. It was submitted that the stocks so supplied by the manufacturer do not belong to the assessee but is the property of the State and only on behalf of the State Government of Andhra Pradesh, the assessee distributes the stocks supplied by the manufacturers to the retail vendors. It was further submitted that the payment is made to the manufacturers for the stock supplied by them to the State Government, only when the stocks are sold to the retailers and the sale proceeds are realised. It was also submitted that the proceeds for sale of stocks are paid by the retailers directly online and in favour of PD account, which belongs to the Treasury of the State Government and therefore, such sale proceeds do not belong to the assessee at any particular point of time. It was submitted that for the work executed by the assessee, it receives only commission and income in the form of ground rent / penalty and its expenditure has to be met from such ground rent and penalties alone. It was also submitted that the privilege fees, special privilege fee etc., are paid by the retailers directly to the State Government of Andhra Pradesh, not by the assessee and therefore, the assessee is not covered by the provisions of section 40(a)(iib) of the Act.

3. The Assessing Officer, however did not accept the assessee's contentions. He observed that the main and ancillary objects of the assessee make it clear, that the assessee is a purely business venture

for carrying on the activity of manufacture, purchase, import and export of alcohol and other beverages as sellers, dealers and distributors either in bulk or in retail. He also observed that assessee-company itself is admitting part of the receipts viz., retail outlet sales, cash discounts received from suppliers, penalty levied on non-moving stock, penalty levied on unlifted stock, as derived from conduct of business as 'income' within the meaning of section 2(24) of the Act. Therefore, he was of the opinion that it was the assessee, which was carrying on the business of purchase and sale of liquor and that assessee is not an agent of the Government and therefore, its income cannot be considered as income of the Government. He also observed that vide clause (iib) of section 40(a), the privilege fee and special privilege fee are not allowable expenditure and therefore, they have to be considered as income of the assessee. He accordingly held that such receipts are taxable in the hands of the assessee and made the addition of privilege fee and special privilege fee for sports promotions, additional privilege fee etc. The A.O further observed that the assessee has remitted an amount of Rs. 510,69,10,252/- under the head 'Chief Minister's Relief Fund' as per the directions of the Andhra Pradesh Government vide G.O.Ms. No.614, dated 06/05/2005. He observed that the contribution is done by way of remittances to the State Government along with the other remittances like privilege fee, special privilege fee etc. Therefore, he was of the opinion that the contribution to CM Relief Fund made by way of application or appropriation of privilege fee etc., is the income of the assessee and brought it to tax.

4. Similarly, he disallowed the leave encashment of Rs. 8,42,385/- on the ground that it was not paid within the due date of filing of return of income u/s 139(1) of the Act. Provident fund, superannuation fund and gratuity funds amounting to Rs. 15,36,759/- was also disallowed

as on the ground that the same was not paid within the due date of filing of return of income u/s 139(1) of the Act. Aggrieved, assessee preferred an appeal before the CIT(A), who granted partial relief by directing the A.O. to allow the deduction of contribution to CM Relief Fund, only if the whole of the sale proceeds are treated as income of the assessee. Against the relief granted by the CIT(A), the Revenue is in appeal before us and against the confirmation by the CIT(A) on the orders of the A.O. that the income belongs to the assessee, the assessee is in appeal before us.

5. Learned Counsel for the Assessee, Sri Y. Ratnakar, while reiterating the submissions made by the assessee before the authorities below submitted that the assessee was initially carrying the business of procuring the liquor from the manufacturers and supply of the same to the retailers, but from the relevant assessment year 2003-04, the State Government has taken over the business and the assessee is not trading in liquor any more, except as a retailer. He submitted that in support of the assessee's contention, the assessee has filed copies of the letters from the Commissioner of Prohibition & Excise, Government of Andhra Pradesh, the Special Chief Secretary, Govt. of Andhra Pradesh and the affidavit of the Managing Director, APBCL, copy of the PD Account of the Commissioner of Prohibition & Excise, Bank account of APBCL for the financial year 2013-14, certificate of remittances made from the PD account of the Commissioner of Prohibition & Excise etc., before the CIT(A) in support of the contention that it is the Government of Andhra Pradesh, which is doing the business and not the assessee. He submitted that the CIT(A) called for a remand report from the A.O. In the remand report, Assessing Officer has stated that all the material was part of the assessment proceedings, therefore, needs no specific reference. The CIT(A) relying upon the said remand has confirmed the

order of the A.O. He submitted that the letters and affidavits are of higher officer of the State Government of Andhra Pradesh and cannot be brushed aside without making any enquiries or verification of the contents of the affidavits and letters. Thus, according to him, the order of the CIT(A) is not sustainable and is in violation of the principles of natural justice. The Learned Counsel for the Assessee has filed detailed written submissions in support of his contentions.

6. The Learned Departmental Representative, on the other hand, supported the orders of the authorities below and relied upon the provisions of section 40(a)(iib) of the Act which has been brought into the statute book w.e.f 01/04/2014.

7. Having regard to the rival contentions and the material on record, we find that from the inception of its formation, the assessee has been carrying on the business of procuring liquor from the manufacturers and supplying the same to the retailers and the assessee claimed deduction of privilege fees and special privilege fees. The Revenue's stand was that the payment of privilege fees and special privilege fees etc., are not allowable expenditure particularly in view of the provisions of section 40(a)(iib) of the Act. It is seen that from the Assessment Year 2003-04, the assessee has changed its nature of business. The Government of Andhra Pradesh has taken over the business and the assessee is only liaisoning between the Government and the retailers. The retailers are paying the privilege fees directly to the Government of Andhra Pradesh. Further, from the letters of Senior Officers of the Government of Andhra Pradesh it is seen that the business is carried on by the Government of Andhra Pradesh, and the assessee is earning only a commission from such transactions. The evidence was filed only before the CIT(A) and the CIT(A) has refused to consider the same. We

agree with the contentions that the evidence and the letters of the Senior Officers of Government of Andhra Pradesh cannot be brushed aside as they are the representatives of the Government and their contentions are the contentions of the Government and therefore, assume importance. In view of the same, we deem it fit and proper to admit the evidence filed by the assessee and remand the same to the file of the A.O. for verification of the letters filed by the assessee and if they are found to be correct and it is found that it is the Government of Andhra Pradesh, which is carrying on the manufacturing and trading of liquor so manufactured, the assessee cannot be considered to have earned income from sale of such liquor. With such directions, we remand the issue to the file of the A.O. for *denovo* verification of the documents filed by the assessee and the *denovo* finding as to whether it was the assessee or the Government of Andhra Pradesh which was carrying on the liquor trading. The merits of other disallowances which has been allowed by the CIT(A) on the ground that the income is brought to tax in the hands of the assessee, also need to be remanded to the file of the A.O for *denovo* consideration.

8. In the result, the appeal of the assessee as well as the Revenue are treated as allowed for statistical purposes.

Pronounced in the open Court on 29<sup>th</sup> January, 2019.

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

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

Hyderabad, Dated: 29<sup>th</sup> January, 2019  
**OKK**

Copy to:-

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2)	DCIT, Circle-1(1), 8 <sup>th</sup> Floor, IT Towers, A.C. Guards, Hyderabad.
3)	The CIT(A)-1, Hyderabad
4)	The Pr. CIT-1, Hyderabad
5)	The DR, ITAT, Hyderabad
6)	Guard File