

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA No.2011/Hyd/2017
(Assessment Year: 2014-15)

Shri Srinivas Vudutha Vs Income Tax Officer
Hyderabad Ward 15(3)
PAN: ABSPV5179J Hyderabad
(Appellant) (Respondent)

For Assessee : Shri Harjeet Singh
For Revenue : Shri Nilanjan Dey, DR

Date of Hearing: 05.02.2019
Date of Pronouncement: 15.02.2019

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2014-15 against the order of the CIT (A)-7, Hyderabad, dated 24.08.2017.

2. Brief facts of the case are that the assessee, an individual, filed his return of income for the A.Y 2014-15 on 9.9.2014 declaring total income of Rs.11,08,818/- after claiming deduction of Rs.7,446/-under Chapter VIA. The return was selected for scrutiny under CASS for the reason "low income from TCS receipts liquor". Therefore, assessment u/s 143(3) was initiated and the assessee was directed to furnish the required information along with the books of account and vouchers. The assessee, however, expressed his inability to produce the same

and requested the AO to treat 2 to 3% of the turnover as profit in his case. The AO, however, estimated the income at 5% of the purchases reduced by closing stock as shown in the P&L A/c for the A.Y 2013-14 and accordingly brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us by raising the following grounds of appeal:

“1. The Appellate Order of the Commissioner of Income (Appeals)-7, Hyderabad, is erroneous both on facts and in law.

2. The Appellate Order of the Commissioner of Income (Appeals)-7, Hyderabad, is not justified and is prejudicial to the appellant and contrary to law and circumstances of the case.

3. The Appellate Order of the Commissioner of Income Tax (Appeals)-7, Hyderabad, upholding the assessment order under section 143 (3) of the Income Tax Act, is not good in law as the assessing officer estimation of business income @ 5% on net purchases (stock put to sale) is unreasonable and not justified and not on par with profits earned in the retail liquor trade business and is based on estimation, assumptions, and surmises without any corroborative evidence, which is undemocratic and untenable.

4. The Learned Commissioner of Income (Appeals)-7 in his Appellate Order has quoted and relied on five case laws of IT AT in upholding the stand of the assessing Officer in estimating income @ 5% stock put use in liquor trade business but also contradicted his own statement by stating uniform profit cannot be adopted in each and every case of similar business as it has been decided in various cases of Jurisdiction IT AT that uniform profit cannot be adopted in each and every case of similar business thus rendering the said order not be justified.

5. The Learned Commissioner of Income (Appeals)-7 in his Appellate Order upheld the estimation income @ 5% stock put use stating that the appellants business is situated in very crowded municipal city limits of Hyderabad wherein huge demand existed for liquor products dealt by the appellant, but the fact is that the appellant business location is not to his advantage as

it situated at place which has no proper direct approach of assesses to customers and is also situated in area which has six liquors shops in radius of one kilometer and is running business under high pressure of competition wherein the earnings 5 % of net profit is impossible.

6. The Appellate Order of the Commissioner of Income (Appeals)-7, Hyderabad, upholding the stand of the assessing Officer in estimating income @ 5% stock put use is not justified as there are decided cases of the Honorable Appellate Tribunal allowing the estimation of income at much lower rate for the liquor trade business.

7. The Learned Commissioner of Income (Appeals)-7 Appellate Order upholding the estimation income @ 5% stock put use is not justified as when the appellant has filed his returns declaring true and correct income based on of books of accounts then why the assessing officers assumptive estimation of business income to be allowed without stating the nature of defectiveness of books accounts.

8. The Appellant craves, leaves to add, alter, amend or delete any other grounds as the occasion may require during the course of hearing of the appeal before ITAT.

9. For these and other reasons, that will be urged at the time hearing of the appeal before the ITAT, the Appellant prays that the relief as detailed be granted.

10. Any other Grounds that may be urged at the time of hearing”.

3. At the time of hearing, the learned Counsel for the assessee, while reiterating the submissions made before the authorities below, placed reliance upon various decisions of the Tribunal in which the Tribunal had directed the AO to estimate the income at 3% of the cost of goods put to sale. In the case of Secunderabad Wines vs. ITO in ITA No.181/Hyd/2016, dated 20.07.2016, this Tribunal has held as under:

“3. At the time of hearing, learned Counsel for the assessee submitted that this issue is covered in favour of

the assessee by the decision of 'A' Bench of this Tribunal in the case of Sri Venkateswara Wines in ITA No.1206/Hyd/2015 dated 27.11.2015 for the A.Y 2011-12 wherein after taking into consideration similar circumstances the Tribunal has upheld the estimation of income at 3% of the cost of the goods sold. Respect following the same, to which both of us are signatories, we direct the AO to adopt 3% of the cost of goods sold as the income of the assessee. The learned Counsel for the assessee did not argue ground Nos.4 and 5 and therefore, the same are rejected as not pressed".

Respectfully following the same, we direct the AO to treat 3% of the cost of goods put to sale as his net profit from the retail business of sale of wines.

4. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 15th February, 2019.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 15th February, 2019.

Vinodan/sps

Copy to:

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- 2 ITO Ward 15(3) IT Towers, Hyderabad
- 3 CIT (A)-7 Hyderabad
- 4 Pr. CIT – 7 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order