

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA No.1784/PUN/2018**
निर्धारण वर्ष / **Assessment Year : 2015-16**

M/s. Phadke & Phadke Wine Shop,
Bazar Tal, Near Bus Stand,
A/P Shevgaon, Tal. Shevgaon,
Dist. Ahmednagar – 414502

PAN : AAJFP3371Q

.... अपीलार्थी/Appellant

Vs.

ITO, Ward 4,
Ahmednagar

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M.K. Kulkarni
प्रत्यर्थी की ओर से / Respondent by : Shri M. K. Verma

सुनवाई की तारीख / Date of Hearing : 14.02.2019	घोषणा की तारीख / Date of Pronouncement: 01.03.2019
--	--

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-2, Pune, dated 10.08.2018 for the Assessment Year 2015-16.

2. The grounds raised by the assessee are as under :-

- “1. On the facts and in the circumstances of the case and in law the Ld. CIT(A)-2, Pune was not justified in dismissing the appeal of the assessee confirming the addition made by the A.O. The addition be deleted.
2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) failed to appreciate the written submissions submitted before

him explaining the entire situation. The business never earned more than 1 to 2% of the profit on sales. The estimation of profit of 8% is exorbitant and unrealistic. The addition be deleted.

3. *On the facts and in the circumstances of the case and in law the A.O. was not justified and Ld. CIT(A) in confirming such estimation of 8% that to without rejecting the books of account under S. 145(3) of the Act. The assessment be set aside.*

3. Briefly stated relevant facts include that the assessee is a trader in country liquor. The Assessing Officer laboured in statutory service of notices / hearing notices / questionnaires on the assessee before completing assessment. On finding that the assessee failed to appear, failed to represent properly, failed to produce books of account, Excise registers and quantitative details, etc., the Assessing Officer invoked the provisions of section 145(3) of the Act. Further, Assessing Officer estimated the profits and applying the rate of 8% on the turnover of Rs.278 crores, the Assessing Officer made an addition of Rs.22,22,525/-.

4. In the First Appellate Proceedings, no personal appearance was made by the assessee before the CIT(A). However, the assessee submitted various evidences and books of account to prove that these profits are never 8%. On considering the same, the CIT(A) decided this issue in para 7 of his order and confirmed the addition. The CIT(A) discussed the requirement of invoking of provisions of section 145(3) of the Act i.e. rejection of books of account and also confirmed the estimation of profits at the rate of 8%. The contents of paras 9 and 10 of the order of CIT(A) are relevant and the same are extracted as follows:-

“9. In the present case as well the appellant has not produced books of account before the Assessing Officer and the addition has been made by the Assessing Officer on estimate basis although he specifically did not reject the

books of account u/s 145(3) of the IT Act. It is accordingly held that such estimation impliedly was estimation of income as per section 145(3) of the I.T. Act.

10. In the light of aforesaid discussion on the facts of the case and decisions cited, I hold that in the circumstances of the case the Assessing Officer was perfectly justified in estimating the net profit on the basis of turnover. Profit at the rate of 8% in the business of country liquor is considered to be fair and reasonable and hence Assessing Officer's action in computing the total income at Rs.22,22,530/- is confirmed."

5. Aggrieved with the said order of CIT(A), the assessee is in appeal before the Tribunal.

6. The Ld. Counsel for the assessee brought my attention to the grounds and submitted that regular GP rate of assessee is around 1% to 2% of the sales and 8% is exorbitant and unrealistic and the same requires revision downwards. However, there is nothing to prove that GP rate is 1% to 2% before the Tribunal also.

7. On the other hand, the Ld. DR submitted that this is a case where the assessee could not make proper representation before the Assessing Officer or the CIT(A). The fact of managing hearing proceedings with written submissions before the CIT(A) was also highlighted. On the merits, the Ld. DR filed the order of Hyderabad Bench of Tribunal in the case of Kanaka Durga Wines Vs. ITO in ITA No.462/HYD/2011, for assessment year 2004-05 read with Miscellaneous Application No.217/Hyd/2011, order dated 18.05.2012 and submitted that the Tribunal passed the order originally on 21.09.2011 and the same was rectified in Miscellaneous Application proceedings stating that, in this line of business, the Tribunal confirmed the estimation of profits @ 5% of purchases was highlighted. In

this regard, he brought my attention to para 10 of the said order. The fact that Hyderabad Bench relied on another decision in the case of M/s. Kanakadurga Wines Vs. ITO, in ITA No.591/Hyd/2011 was also mentioned by the Ld. DR. He also submitted the fact that the Tribunal considered the assessee's submissions for adopting only 3% on purchases was also brought to my attention referring to para 8 of the order of Tribunal (supra) in the case of Kanakadurga Wines Vs. ITO (supra). In any case, there is no dispute about the requirement of rejection of books of account and invoking provisions of section 145(3) of the Act before the Tribunal.

8. On hearing both sides and after perusing the said order of the Tribunal as well as the orders of ITO and the CIT(A), I find the business line of both assesseees are comparable. Further, I find relevant to extract the contents of paras 9 and 10 of the order of Tribunal in the case of M/s. Kanaka Durga Wines Vs. ITO (supra) and the same are extracted hereunder :-

- “9. On the other hand, the learned DR, has stated as follows:
1. In the case of M/s Kanakadurga Wines Vs. ITO, Ward-9(3), Hyderabad (591/Hyd/2011, the Hon'ble ITAT had upheld the rejection of books of account and also estimation of GP @ 30% of sales.
 2. The Hon'ble ITAT had directed that the net profit be estimated @ 30% of purchases. This was done after verifying the previous history of business done by the assessee. The Hon'ble ITAT had followed the same decision in some other cases.
 3. However, in these cases, there is no previous business done by the assessee to verify. The Assessing Officer has relied on the business practices in this trade where the sale price is much above that fixed by the Excise Dept. i.e. more than MRP. The media have reported numerous cases where liquor is sold above the MRP.
 4. It is brought to the kind notice of the Hon'ble Tribunal that as per the latest ACB Investigation in the liquor trade, the sales are made much above MRP by forming cartels of liquor traders.
 5. In the interest of social justice, it is imperative that appropriate taxes are collected from liquor trade. It is estimated that liquor trade contributes to Rs.18,000 crores to the state exchequer but

proportionate direct taxes are not realized by the income tax department.

6. *It is also submitted that TDS and TCS rates have been prescribed by the CBDT after evaluating the profit margin in each trade. For the liquor trade, a rate of 1% TCS (and increased by surcharge and education cess) has been prescribed. If this rate is adopted, the net profit margin in the liquor trade exceeds 5%.*
7. *A provision for refund is provided to the assessee under unforeseen conditions where the assessee incurs losses or lesser profits. But after a perusal of the facts of these cases, there does not seem to be a case for loss or low profits.*
8. *As a result of estimation of 3% being upheld by the ITAT, refunds are resulting in many cases which is not a scenario envisaged by the CBDT while fixing TCS of 1% for liquor trade.*
9. *Under the circumstances cited above, it is requested that the Hon'ble Tribunal be pleased to direct that the estimate of net profit above 5% of the purchases made by the assessee.*
10. *After hearing both the parties and perusing the record as well as the orders of the authorities below, after taking into consideration the submissions of the DR, inter-alia, that estimate of net profit above 5% of the purchases made by the assessee is to be adopted, we do not find any infirmity in the order of the CIT(A) in directing the AO to estimate net profit at 5% of the purchases or stock put for sale during the year subject to the assessed income not less than returned income. Therefore, the order of the CIT(A) is hereby upheld on this count and dismiss the ground of appeal of the assessee."*

9. From the above, it is evident that against the request for adopting 3% of the purchases, the Tribunal after rejecting the said request and determined the estimation of profits at 5% of the purchases. In the instant case, 8% of sales was considered as profits. In my considered opinion, the decision of the Tribunal of Hyderabad Bench in the case of Kanaka Durga Wines (supra) has some persuasive value. Hence, I approve the decision involving of the provision of section 145(3) of the Act and estimation at the rate of 5% of the purchases. Following the said order of Tribunal in Kanaka Durga Wines Vs. ITO read with Miscellaneous Application (supra), I direct the Assessing Officer to adopt the said rate of 5% of the purchases. I

dismiss the contention of the ld. AR. Accordingly, the grounds raised by assessee are partly allowed.

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

Order pronounced on this 01st day of March, 2019.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 01st March, 2019.
GCVSR/Sujeet

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Pune;
4. The Pr.CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune