

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' SMC Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

ITA No.1587/Hyd/2018
(Assessment Year: 2013-14)

Shri Vadde Venkateswarlu Vs Income Tax Officer
Nellore Ward 1
PAN:AEEPV7007C Nellore
(Appellant) (Respondent)

For Assessee : Shri K.A. Sai Prasad
For Revenue : Shri D.J. Prabhakar Aand

Date of Hearing: 13.03.2019
Date of Pronouncement: 15.03.2019

ORDER

This is assessee's appeal for the A.Y 2013-14 against the order of the CIT (A)-Tirupati, dated 10.05.2018.

2. At the outset, it is seen that there is a delay of 3 days in filing of the appeal and the assessee has filed an application for condonation of delay. After hearing both the parties, we are convinced that the delay is neither willful nor wanton and hence the delay is condoned. I proceed to dispose of the appeal as under.

3. Brief facts of the case are that the assessee, an individual, carrying on business of retail trading in liquor, filed his return of income on 10.02.2015 admitting total income of Rs.5,00,640/-. The return was selected for scrutiny under CASS

and the assessee was required to furnish his books of account. Since the assessee submitted that he was not maintaining books of account, the AO estimated the income at 5% of the cost of goods put to sale. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO, since the assessee did not appear before him. Aggrieved, the assessee is in appeal before us by raising the following grounds of appeal:

“1. The order of the learned CIT(A) is not correct either on facts or in law and in both.

2. The learned first appellate authority is not justified in confirming the addition made by the AO, without giving further opportunity of being heard.

3. The learned CIT (A) is not justified in confirming the addition made by the AO estimating the income Rs.11,41,953/- at 5% on cost of goods put to sale Rs.2,28,39,071/-.

4. The learned CIT (A), failed to appreciate the fact that the income estimated by the AO is on higher side.

5. The appellant craves leave to add or amend or alter any of the grounds at the time of hearing of appeal”.

4. The learned Counsel for the assessee submitted that the assessee being a trader in liquor, the income of the assessee should be estimated at 3% of the cost of goods put to sale. He relied upon the decision of the Coordinate Bench of the Tribunal in the case of Shri Sridhar Ramagiri vs. ITO in ITA No.1924/Hyd/2017. A copy of the said order is also filed.

5. The learned DR, however, supported the order of the CIT (A).

6. Having regard to the facts and respectfully following the decision of the Coordinate Bench of the Tribunal (to which I am a signatory), I direct the AO to estimate the income at 3% of the cost of goods put to sale. For the sake of convenience and ready reference, the relevant paragraph is reproduced hereunder:

“5. Having regard to the rival contentions and the material on record, we find that this Tribunal, in the case of Secunderabad Wines (Supra) vide orders dated 20.07.2016 (to which both of us are signatories) have held 3% of the cost of goods put to sale to be reasonable estimation of income. For the sake of clarity and ready reference, relevant paragraphs are reproduced hereunder:

“2. Brief facts of the case are that the assessee-firm which is in the business of wholesale and retail sale of liquor, filed its return of income for the A.Y. 2011-2012 on 28.09.2011 admitting income of Rs.52,25,566. The assessment proceedings under section 143(3) read with section 147 of the Act were initiated and during the said assessment proceedings after verification of various details filed by the assessee, the A.O. found that the assessee has offered low gross profit of 11.01% as against the gross profit margin of retail at 24% as per the G.O.Ms. issued by the Government of A.P. The assessee submitted that the gross profit margin of 24% as per G.O. of Government of A.P. is absolutely on the higher side. The Ld. A.R. contended that in majority of the similar liquor cases, the ITAT, Hyderabad Bench has been taking the totality of the facts into consideration and holding that the total income of the assessee shall be 3 to 5% of the goods put to sale and that the same has been upheld by the Hon'ble High Court of A.P. The A.O. however, observed that the Hon'ble A.P. High Court in the case of CIT vs. Kamlekar Shankar Lal in ITTA.No.21 of 2013 dated 23.07.2013 has estimated the net profit at 5% of the purchase or stock put to sale. He therefore, estimated the income at 5% of the goods put to sale and brought it to tax. Similarly, he also made an addition of miscellaneous receipts of Rs.3,39,064. Aggrieved, assessee preferred an appeal before the CIT(A) who confirmed the order of the A.O. and the assessee is in second appeal before us.

3. At the time of hearing, Ld. 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. 2011-2012 wherein after taking into consideration similar circumstances the Tribunal has upheld the estimation of income at 3% of the cost of the goods sold. Respectfully following the same, to which both of us are signatories, we direct the A.O. to adopt 3% of the cost of goods sold as the income of the assessee. The Ld. Counsel for the assessee did not argue ground Nos. 4 and 5 and therefore, the same are rejected as not pressed”.

7. Respectfully following the same, assessee's appeal is allowed.

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

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

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 15th March, 2019.

Vinodan/sps

Copy to:

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- 2 ITO Ward-1 Nellore
- 3 CIT (A)-Tirupati
- 4 Pr. CIT - Tirupati
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order