

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “A” BENCH: HYDERABAD

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA. No.205/Hyd/2018 (Assessment Year: 2014-15)

Danam Dharmender, Hyderabad. PAN: ACZPD 9126 H (Appellant)	vs.	Income Tax Officer, Ward-14(3), Hyderabad. (Respondent)
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For Assessee:	Sri Sunil Kumar Jain & Sanjay Kumar Sharda
For Revenue :	Smt. V. Rajitha, DR

Date of Hearing :	08.03.2019
Date of Pronouncement :	15.03.2019

ORDER

PER V. DURGA RAO, JM.

This appeal filed by the assessee is directed against the order of the CIT(A)-6, Hyderabad dated 01/11/2017 for the assessment year 2014-15. In this appeal, the assessee has raised the following grounds of appeal:-

- “1. In computing the total income for A.Y. 2014-15,
 - a. The Ld. Assessing Officer passed the order for A.Y. 2015-16 u/s 143(3) estimating profit, without first rejecting the audited books of account and the CIT(A) upheld the order passed.
 - b. The CIT(A) has erred in upholding the wrongly and arbitrarily estimated net profit on the basis of 2.27% of sales as made by the Assessing Officer.”

2. Brief facts of the case are that the assessee, an individual, is engaged in the business of sale of liquor, filed return of income admitting

total income of Rs. 15,89,890/-. During the assessment proceedings u/s 143(3) of the Act, the A.O. observed that the assessee is not maintaining proper book of account and therefore, failed to produce before him when called for. Therefore, after considering the assessee's submissions with regard to the changes brought in by the Government in the Excise Policy, A.O. proceeded to estimate the income @ 2.27% of the stock put to sale of Rs. 11,48,68,123/- which comes to Rs. 26,07,506/- and the assessed income was determined at Rs. 26,07,510/-.

3. Aggrieved, assessee carried the matter in appeal before the CIT(A), who confirmed the decision of the A.O. by observing as under:

"8.4. In view of the above, I have calculated the net profit disclosed by the assessee of Rs. 16,89,387/- (1.47% of the sales) in terms of percentage of the goods put to sale. Similarly, I have calculated the net profit estimated by the A.O. of Rs. 26,07,506/- (2.27% of the sales) in terms of percentage of the cost of goods put to sale. Also I have estimated the net profit / income of the assessee @ 3% and 5% of the cost of goods put to sale for sake of comparative analysis. The details of the same are given below:

<i>Opening Stock</i>	<i>Rs. 42,15,150/-</i>
<i>Add: Purchases</i>	<i><u>Rs. 9,73,51,693/-</u></i>
	<i>Rs. 10,15,66,843/-</i>
<i>Less: Closing Stock</i>	<i><u>Rs. 29,25,800/-</u></i>
<i>Cost of goods put to sale</i>	<i><u>Rs. 9,76,41,043/-</u></i>

Estimation of Profits @ 3% of the cost of goods put to sale Rs. 29,29,231/- (9,76,41,043 X 3 / 100)

Estimation of profits @ 5% of the cost of goods put to sale Rs. 48,82,052/- (9,76,41,043 X 5 / 100)

8.5. As seen from the above, even after considering the bare minimum of % of cost of goods put to sale, the estimated profits of the assessee works out to be Rs. 29,29,231/-. On the other hand, the assessee has disclosed only Rs. 16,89,887/- as its profits / income from business,

whereas the A.O. estimated at Rs. 26,07,506/- which is also below the 3% of cost of goods put to sale.

8.6.....

As seen from the above, the estimation of profits made by the assessee on the basis of sales is only 2.67% of the cost of goods put to sale which is well below the 3% normally claimed by the assessee in other cases. Under these circumstances, I am of the opinion that in reality the estimation of profit made by the A.O. is advantageous to assessee. Even on the facts of the case, after considering additional license fee paid by the assessee in the form of privilege fee, the estimation of income made by the A.O. @ 2.67% of cost of goods put to sale does not require further reduction or modification. Accordingly, after having considered the facts of the case, the estimation of the income made by the A.O. is confirmed. Thus, the grounds of appeal are dismissed.”

3.1. Aggrieved, assessee is in further appeal before the Tribunal by raising the above mentioned grounds of appeal.

4. The Learned Counsel for the Assessee reiterated the submissions made before the lower authorities and submitted that the estimating the profit @ 2.27% of sales without rejecting the books of account is not correct.

5. Learned Departmental Representative, strongly supported the orders of the authorities below.

6. Having regard to the rival contentions and the material on record, we find that the assessee is involved in retail business of liquor and therefore, could not furnish the relevant books of account properly. Therefore, A.O. has estimated the income @ 2.27% 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 and various similar cases has held that when the assessee is unable to explain the sales and in the absence of any supporting documentary evidence, in the interest of substantial justice, the Tribunal gave direction to the A.O. to estimate the income @ 3% of the cost of the goods put to sale. In the instant case, the AO, on verification of the books of account, bills and vouchers, came to a conclusion that they are self-made and assessee could not furnish the nature of expenses incurred by the assessee and therefore, A.O. resorted to estimation of profits of the business @ 2.27% of the sales. It implies that though the A.O. has not specifically rejected the books of account, when the income is estimated it can be inferred that the books of account, bills, vouchers etc., submitted by the assessee are not proper and they are rejected and therefore, the income is estimated. Regarding the estimation of income @ 2.27% of the cost of goods put to sale, the A.O. has genuinely taken into consideration all the expenses incurred by the assessee and correctly estimated the income, which is a reasonable decision. On appeal, the CIT(A), discussed the issue at length and confirmed the decision of the A.O. and dismissed the appeal filed by the assessee. Therefore, in view of the facts and circumstances of the case, we are of the considered opinion that the decision of the CIT(A) does not call for any interference. Thus, the grounds of appeal filed by the assessee is dismissed.

7. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 15th March, 2019.

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Sd/-

**(V. DURGA RAO)
JUDICIAL MEMBER**

Hyderabad, Dated: 15th March, 2019.

OKK, Sr.PS

Copy to

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2.	Income Tax Officer, R.No.637, Ward-14(3), 6 th Floor, C-Block, IT Towers, Hyderabad.
3.	CIT (A)-6, Hyderabad.
4.	Pr. CIT-6, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File