

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

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

ITA. No.692/Hyd/2018
Assessment Year: 2014-15

Venkat Narsimha Reddy Katkuri, Hyderabad. PAN: AHVPK 4461 D (Appellant)	vs.	Income Tax Officer, Ward-11(5), Hyderabad. (Respondent)
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For Assessee:	Shri P. Balakrishna
For Revenue :	Smt. M. Narmada, DR

Date of Hearing :	05.03.2019
Date of Pronouncement :	13.03.2019

ORDER

PER V. DURGA RAO, JM.

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A)-5, Hyderabad dated 24/01/2018 and it pertains to A.Y. 2014-15. The assessee has raised the following grounds of appeal:

- “1. Both A.O. & Learned CIT(A)-5, Hyderabad erred in law and facts of the case.
2. The Hon’ble CIT(A)-5, Hyderabad ought to have appreciated the facts and law while dismissing the appeal.
3. The estimating 5% gross profit on purchase is arbitrary in this line of business.
4. Disallowance of expenditure claimed against insurance commission received is arbitrary.”

2. At the outset, brought to our notice that there is a delay of 13 days in filing the appeal before the Tribunal and the reason for delay is

because of illness of the assessee, the appeal could not be filed within the prescribed time limit and prayed for condonation of delay. After hearing the Learned Counsel for the Assessee and on perusal of the affidavit filed by the assessee as well as considering the smallness of the delay of 13 days, we find there is a reasonable cause and it is a fit case to condone the delay. Accordingly, the delay of 13 days is condoned and proceed to decide the appeal on merits.

3. Brief facts of the case are that the assessee, an individual, deriving income from liquor business, filed his return of income for the A.Y. 2014-15 admitting a total income at Rs. 3,67,360/-. The case was selected for scrutiny under CASS. During the course of scrutiny proceedings, assessee was asked to furnish books of accounts and bills / vouchers for verification. Considering the assessee's failure to furnish the evidence in support of his claim made in the books of account, A.O. relied upon the decision of the ITAT in the case of M/s. Kanakadurga Wines in ITA No.217/Hyd/2011, dated 18/05/2012 and estimated the profit @ 5% on cost of stock put to sale amounting to Rs. 13,65,822/- and completed the assessment u/s 143(3) of the Act determining the assessed income at Rs. 18,73,249/-.

4. Aggrieved, assessee preferred an appeal before the CIT(A), who confirmed the decision of the A.O. of estimating the profit @ 5% of the

cost of stock put to sale. Further aggrieved, assessee is in appeal before the Tribunal by raising the above mentioned grounds of appeal.

5. At the time of hearing, Learned Counsel for the Assessee submitted that the issue involved in this appeal is covered in favour of the assessee by the decision of this Tribunal in a number of cases, wherein the Tribunal has estimated the profit from sale of liquor @ 3% of the stock put to sale. He therefore prayed that similar direction may be given to the A.O.

6. Learned Departmental Representative, however, supported the orders of the authorities below.

7. 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 @ 5% 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 has held as under:

“5. Having regard to the rival contentions and the material on record, we find that the assessee has not maintained any books of account and therefore, the estimation of income is justified. It is only the rate at which the income is to be estimated is before us. A.O. has estimated the income at 5% of the cost of goods sold, while the assessee is seeking the estimation at 3% of the cost of goods sold. We find that in the case of Venkateswara Wines, Nizamabad (supra), the Coordinate Bench of this Tribunal has taken note of the decision of Hon'ble High Court of Telangana and Andhra Pradesh in the case of CIT vs. Kamlekar Shankar Lal (supra) to hold as under :

"6. Having regard to the rival contentions and the material on record, we find that the AO has called for books of account of the assessee but the assessee had failed to produce the same. Therefore, AO had estimated the income of the assessee at 2.5% of the turnover. The CIT wants the same to be estimated at 5% of the total turnover because the Tribunal in the case of an assessee carrying on the same business of sale of IMFL has estimated the income at 5% of the turnover. This, in our view, is not justified as held by the Coordinate Bench of this Tribunal. The ITA.No.1206/Hyd/2015 Sai Venkateswara Wines, Secunderabad uniform net profit cannot be adopted in each and every case of similar business. Estimation of net profit must be on the basis of facts involved in each and every case. Therefore, in our view, there is no error committed by the AU in estimating the profit at 2.5% of the total turnover. Thus grounds of appeal No.2 & 3 are allowed."

5.1. In the case before us, the assessee is agreeable to the estimation of income at 3% of the cost of goods sold. As the facts before us are similar to the facts before the Tribunal in the case of Venkateswara Wines, Nizamabad (supra) and the uniform rate of profit cannot be adopted in the case of every assessee in similar business, we allow ground No.2 of the assessee".

8. Respectfully following the decision of the Coordinate Bench, the AO is directed to estimate the net profit at 3% of the cost of goods put to sale. Accordingly, Grounds raised by the assessee are allowed.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 13th March, 2019.

Sd/-

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

Sd/-

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

Hyderabad, Dated: 13th March, 2019.

OKK, Sr.PS

Copy to

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2.	Income Tax Officer, Ward-11(5), R.No. 1010, Signature Towers, Botanical Gardens, Kondapur, R.R. District.
3.	CIT (A)-5, Hyderabad.
4.	Pr. CIT-5, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File