

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA Nos. 195 & 196/VIZ/2018
(Asst. Year : 2003-04 & 2006-07)**

Rayapati Venkata Koteswara vs. ACIT, Central Circle,
Prasad, D.No. 4-5-5/9, Vijayawada.
2nd Lane, Navabharat Nagar,
Ring Road, Guntur.

PAN No. AFTPR 6672 K
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri D.K. Sonawal – CIT DR

Date of hearing : 24/01/2019.
Date of pronouncement : /03/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

These appeals by the assessee are directed against the separate orders of Commissioner of Income Tax (Appeals)-3, Visakhapatnam, each dated 28/03/2018 for the Assessment Year 2003-04 & 2006-07. Since the facts and issue are common, clubbed and heard together and disposed of by way of this consolidated order.

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2. The only ground raised by the assessee in this appeal relates to addition of Rs. 6,50,000/-

3. Facts of the case, in brief, are that the assessee is an individual and partner in M/s. Sri Balachamundeswari Cotton Company and M/s. SBC Marine Exports, filed his return of income for the Assessment Year 2003-04 by declaring total income of Rs.7,79,821/- along with agricultural income of Rs. 50,000/- and assessment was completed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') on 22/11/2005 by assessing the taxable income at Rs. 10,79,820/-. Subsequently, a search and seizure operation under section 132 was conducted on 08/02/2006 and on subsequent dates in business and residential premises of the assessee. The Assessing Officer has issued a notice under section 153A of the Act. In response, assessee has filed his return of income admitting total income of Rs.17,89,821/- and agricultural income of Rs. 50,000/- on 10/12/2007. Subsequently, the Assessing Officer has issued notices under section 143(2) & 143(1) along with questionnaire to the assessee calling for the information. The Assessing Officer during the course of assessment proceedings has made an addition towards profit on unaccounted sales of Rs. 6.50 lakhs and assessment was completed under section 143(3) r.w.s. 153 of the Act, dated 31/12/2007. In the assessment order, the Assessing Officer has noted that the assessee indulged in unaccounted purchases and

sale of cotton kappas, there will not be any expenses connected with such transactions hence, assessee's profit margin will be almost equal to the gross profit rates in such line of business. For the year under consideration, the gross profit rate admitted by M/s.Sri Balachamundeswari Cotton Company was 8.47%, however, taking into consideration the nature of transaction and giving credit for expenses like loading and unloading etc., the profit earned by the assessee is taken at 4% which meets the ends of justice.

4. On being aggrieved, assessee carried the matter in appeal before the Id. CIT(A). Before the Id. CIT(A) it was submitted that the assessee is a commission agent carrying purchase and sale of cotton kappas, therefore, submitted that the Assessing Officer without considering the explanation of the assessee he has compared with the case of M/s. Sri Balachamundeswari Cotton Company wherein the company is involved in a trading and submitted that it is a comparable case to estimate the profit. It was also submitted before the Id. CIT(A) that in the case of Sri Yakkala Mohana Rao, the Assessing Officer has estimated profit at 2%, the same may be considered in the assessee's case also. The Id. CIT(A) after considering the explanation of the assessee,

confirmed the order of the Assessing Officer by observing that the Assessing Officer by analysing the profit ratio of M/s.Sri Balachamundeswari Cotton Company estimated the income at 4% and dismissed the appeal of the assessee. For the sake of convenience, the relevant portion of the order is extracted as under:-

"5.2(a) It is the contention of the appellant that the Assessing Officer has estimated the profit at 4% on the total transactions recorded in the bank statements without any logic. The Assessing Officer would have accepted 2% disclosed by the appellant as it represent 'Commission'. The Assessing Officer in a related case ha accepted 2% of profit.

5.2(b) I have carefully considered the argument of the appellant. The facts of the issue are that the appellant was maintaining bank accounts in the name of employees at Andhra Bank, Arundalpet, Corporation Bank Guntur, Oriental Bank of Commerce Guntur. The appellant was indulged in purchasing 'Cotton Kappas' at lower price and sells to 'Cotton Corporation of India' at higher price. The appellant agreed that the account holders are his employees, however, denied that they were his benamies. Be it as it may, the Assessing Officer has conducted elaborate enquiries and found that due to the appellant proximity with Cotton Corporation of India through his father, he could manage the operations. The Assessing Officer has considered both purchase and sale of Cotton Kappas as unaccounted transactions and tF1sexpenditure needs to be deducted. The Assessing Officer has analysed the gross profit ratio of the firm (M/s. BaI.achamundeswari Cotton Co.) from the Asst. Years 2000-01 to 2005-06 where the appellant is a partner.

Assessment Year	GP Ratio
2000-01	3.87%
2001-02	5.18%
2002-03	8.45%
2003-04	8.47%
2004-05	13.33%
2005-06	4.54%

The least profit is 3% and the highest profit is 13%. Since the appellant is a partner of the firm, the firm had disclosed 8.47% for the Assessment Year 2003-04. The Assessing Officer has adopted profit at 4% on turnover of Rs.3,25,00,000/- representing deposits in the bank account. It is felt that the Assessing Officer is reasonable in estimating the profit at 4%. The appellant's comparative case, Sri Yakkala Mohana Rao is not acceptable as the scale and operation in that case is different. Accordingly, the addition of Rs.6,50,000/- made by the Assessing Officer is confirmed."

- 5.** Ld. counsel for the assessee has reiterated the submissions which he made before the Id. CIT(A).
- 6.** On the other hand, Id. Departmental Representative strongly supported the orders passed by the authorities below.
- 7.** The assessee is an individual carrying on the business of cotton kappas. During the course of assessment proceedings, the Assessing Officer has noted that the assessee has made unaccounted sales in the name of benamies and therefore, he estimated the profit at 4% by comparing with M/s. Sri Balachamundeswari Cotton Company wherein the assessee is also a partner. Before the Id. CIT(A) and even before us, the case of the assessee is that he is a commission agent and his case cannot be compared with the trading company i.e., M/s. Sri Balachamundeswari Cotton Company as the assessee is buying and selling cotton kappas and earning profits. The assessee is only a commission agent, his margin will be always less and

submitted that the estimation made at 4% may be restricted to 2%. He also submitted that in the similar circumstances, out of arising from the same search in the case of Sri Yakkala Mohana Rao, the Assessing Officer has estimated the profit at 2%. We have considered the assessment order passed by the Assessing Officer in the case of Sri Yakkala Mohana Rao, dated 28/12/2007 under section 143(3) r.w.s. 153C of the Act, wherein similar set of facts and similar type of business, the Assessing Officer has estimated 2% profit from the business. In the present case, the Assessing Officer compared the assessee's case with the M/s. Sri Balachamundeswari Cotton Company wherein the company is carrying trading activities but, the assessee is only a commission agent. Therefore, we find that the commission agent cannot be compared with the company, which involved in buying and selling of the cotton kappas and the margin always varies. In view of the above, we find that the Assessing Officer as well as Id. CIT(A) is not justified in estimating the profit of the assessee at 4%, therefore estimation of profit is restricted to 2%. Accordingly, the order passed by the Id. CIT(A) is reversed and the appeal filed by the assessee is allowed.

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8. In so far as Assessment Year 2006-07 is concerned, facts are similar to the facts involved in Assessment Year 2003-04. Therefore, in view of our decision in ITA No. 195/VIZ/2018, the order passed by the Id. CIT(A) is reversed and the appeal filed by the assessee is allowed.

9. In the result, both the appeals filed by the assessee are allowed.

Order Pronounced in open Court on this 20th day of March, 2019.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 20th March, 2019.

vr/-

Copy to:

1. *The Assessee – Rayapati Venkata Koteswara Prasad, D.No. 4-5-5/9, 2nd Lane, Navabharat Nagar, Ring Road, Guntur.*
2. *The Revenue – ACIT, Central Circle, Vijayawada.*
3. *The Pr.CIT (Central), Visakhapatnam.*
4. *The CIT(A)-3, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.