

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD

BEFORE V. DURGA RAO, JUDICIAL MEMBER
AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

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| ITA No. 2096/Hyd/2017 | | |
| Assessment Year: 2014-15 | | |
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| Sri Bhaskar Simala, Hyderabad. PAN: BXMPS 1004 C | Vs. | Income Tax Officer, Ward-15(1), Hyderabad. |
| (Appellant) | | (Respondent) |
| | | |
| Assessee by: | Sri S. Rama Rao | |
| Revenue by: | Sri K. Gopala Krishna, DR | |
| | | |
| Date of hearing: | 12/03/2019 | |
| Date of pronouncement: | 15/03/2019 | |

ORDER

PER V. DURGA RAO, J.M.:

This appeal filed by the assessee is directed against the order of the CIT (A)-7, Hyderabad dated 20/10/2017 for the assessment year 2014-

15. The assessee has raised the following grounds of appeal:-

- "1. The order of the CIT (A) is erroneous both on facts and in law.*
- 2. The Ld CIT (A) erred in confirming the order of the Assessing Officer in rejecting the books of account and resorting to estimation of income.*
- 3. The Ld CIT (A) erred in confirming the estimation of income at 5% of the cost of goods put sold without considering the explanations submitted before him.*

4. *The Ld CIT (A) erred in holding that the investment made into business of Rs. 32,50,000/- was not properly explained. The Ld CIT (A) ought to have considered the fact that the appellant was in the business of purchase and sale of liquor during the assessment year 2009-10 and that the appellant was in possession of capital during the said assessment year.*
5. *The Ld CIT (A) ought to have held that the amount of Rs. 1,19,320/- is separately not assessable when the income from liquor is estimated and the assessment is made on the basis of such estimation.*
6. *The Ld CIT (A) erred in confirming levy of penalty of interest u/s 234A, 234B and 234D of the Act.”*

2. Grounds No.1 and 6 are general in nature and therefore the same are dismissed.

3. Grounds No.2 and 3 relates to estimation of income. Brief facts are that the assessee, an individual, is engaged in the business of trading in liquor. The assessee filed its return of income admitting total income of Rs. 6,95,840/-. 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 that the profit in this line of business is around 3%, as shown 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 various other decisions and estimated the profit @ 5% on cost of stock put to sale amounting to Rs. 40,92,272/- and completed the assessment

u/s 143(3) of the Act determining the assessed income at Rs. 63,23,330/-.

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 Grounds no. 2 and 3 of 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 No.2 and 3 raised by the assessee are allowed.

9. Ground no.4 relates to addition of Rs. 32,50,000/-. During the assessment proceedings, AO noted that on perusal of balance

the assessee had introduced net capital of Rs. 32,50,000/- during the year. However, the assessee could not furnish the sources for the investment even after affording sufficient opportunities given to the assessee and therefore, AO treated the net investment made by the assessee of Rs. 32,50,000/- as 'unexplained investment' and brought it to tax.

10. Aggrieved assessee carried the matter in appeal before the CIT (A). Before the CIT (A) it was submitted that in the assessment year 2009-10 the assessee is having profit of Rs. 21,83,843/-. Assessee is also having agricultural income and dairy form and the capital introduced by the assessee are from these sources. CIT (A) after considering the assessee's explanation, he observed the assessee is not able to establish that investment made in the year under consideration from the surplus funds from liquor trade in the AY 2009-10 and dismissed the appeal filed by the assessee.

11. Before us, Learned Counsel for the assessee has reiterated the submissions made before the lower authorities. In so far as the investment of Rs. 32,50,000/- is concerned, the assessee has not filed any details neither before the AO nor before the CIT (A)

except stating that the source of funds is the profit in trade for the AY 2009-10, agricultural income and income from dairy form which he could not establish with any supportive documentary evidence. Therefore, in the above facts and circumstances of the case, we are of the opinion that the argument of the Learned Counsel for the assessee cannot be accepted and we find the assessee failed to discharge burden casted upon him to show that the investment made by the assessee of Rs. 32,50,000/- from his own sources and therefore, this ground of appeal raised by the assessee is dismissed and we see no reason to interfere with the order of the CIT (A).

12. Ground No.5 relates to addition of Rs. 1,19,320/-. As per the assessee this amount is received on account of incentives and the case of the assessee is that when the income is estimated no separate addition can be made. We find that during the proceedings the assessee could not explain the nature of incentives received. Even before the CIT (A), the assessee could not improve his case and therefore, the CIT (A) also not considered the incentives as part of the business income and also observed that the income from sale of cartons and sale of empty bottles cannot be treated as income from business and rejected

the ground raised by the assessee. Even before us, Learned Counsel for the assessee except reiterating the submissions made before the lower authorities, could not improve his case and therefore, we see no reason to interfere with the decision of the CIT (A) on this ground. Accordingly, ground no.5 raised by the assessee is dismissed.

13. In the result, appeal filed by the assessee is partly allowed.

Pronounced in the open Court on 15th March, 2019.

Sd/-
(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Hyderabad, Dated: 15th March, 2019

OKK

Copy to:-

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| 1) | Bhaskar Simala, Prop. Sri Balaji Wines, H.No.5-8-19, Post: J J Nagar Colony, Yapral, Secunderabad-500 087. |
| 2) | ITO, Ward-15(1), Income Tax Towers, AC Guards, Hyderabad. |
| 3) | The CIT(A)-7, Hyderabad |
| 4) | The Pr. CIT-7, Hyderabad |
| 5) | The DR, ITAT, Hyderabad |
| 6) | Guard File |