

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

I.T.A. No. 429/HYD/2018

Assessment Year: 2014-15

Gariné Chandramouli, KHAMMAM [PAN: AHPPC6799Q]	Vs	Income Tax Officer, Ward-1, KHAMMAM
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(Appellant)

(Respondent)

For Assessee	: Shri M. Chandramouliswara Rao, AR
For Revenue	: Shri Satya Prashant, DR

Date of Hearing : 18-02-2019

Date of Pronouncement : 03-04-2019

ORDER

PER S. RIFAUR RAHMAN, A.M. :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-7, Hyderabad, dated 11-12-2017, for the AY. 2014-15.

2. Brief facts of the case are that the assessee, an individual, deriving income from business in purchase and sale of liquor and electricals, filed his return of income for the AY. 2014-15 on 03-02-2015, admitting total income of Rs. 10,92,510/-. The return was processed u/s. 143(1) of the Income Tax Act [Act]. Subsequently, the case was taken up for

scrutiny under CASS and notices u/s. 142(1) and 143(2) of the Act were issued to the assessee.

2.1. During the course of assessment proceedings, the assessee was asked to produce books of accounts viz., cash book, copy of bank statements, ledgers, reconciliation statement with respect to the gross collections reflected in the return of income vis-à-vis gross collections reflected in the TDS certificates etc., for verification. On verification of books of account produced and vouchers separately, it was found that majority of the expenditure claimed under the heads hamali, salaries, rents, misc., and shop expenditure were not supported by proper vouchers. Most of the expenditure under these heads were supported by self-made vouchers which are not amenable for verification with reference to the expenditure booked in the Profit & Loss A/c.

2.2. When questioned about the authenticity and genuineness of the expenses debited in the Profit & Loss A/c, it was explained by the Ld. Counsel for the assessee that in this line of business maintenance of bills/vouchers is very difficult as the business is done at peak hours. It is also stated by him that the assessee is unable to maintain each and single voucher for expenditure debited to the Profit & Loss A/c, as they were supposed to be maintained by daily labourers. However, it is contended that all the expenditure debited to the Profit & Loss A/c were actually incurred and were reasonable with reference to the quantum of business done.

2.3. Since this is a tax audit case and the assessee was unable to produce most of the vouchers in proper format as called for during the course of assessment, the AO observed that the said expenditure cannot be treated as true and correct as the vouchers maintained for the above expenditure could not be produced or did not contain all the details of expenditure. Further, they are not amenable for verification and hence, the genuineness and reasonableness of expenditure claimed by the assessee cannot be satisfactorily established and thereby the trading results shown by the assessee cannot be relied upon.

2.4. In view of the deficiencies noticed in maintenance of books of account, the AO rejected the books of account maintained by the assessee by invoking the provisions of section 145(3) and estimated the net profit @5% of the 'cost of stock put for sale' for the year under consideration, following the decision of Hon'ble High Court of Hyderabad in the case of CIT Vs. Mekala Balreddy in ITTA No. 28 & 29/2013, dated 30-07-2013.

2.5. After verification of the records and information furnished by the assessee, the AO noticed that the assessee had admitted income at Rs. 2,59,056/- towards electrical business during the FY 2013-14 relevant for AY 2014-15. He further noticed that in the P&L A/c for the year ending 31st March, 2014, assessee claimed expenditure on various head, namely, salaries, shop rent transport etc. When asked to

furnish details for the same along with supporting evidences, the AR of the assessee furnished the evidences in support of the claim. On examination of the same, the AO held that some of the expenses were supported by vouchers which are not susceptible for verification. When, he proposed to make a round sum addition of Rs. 30,000/- towards disallowance of expenses claimed, the AR agreed for the same, hence, addition of Rs. 30,000/- was made.

2.6. Aggrieved, assessee preferred an appeal before the CIT(A), who partly allowed the appeal of assessee.

3. Aggrieved, assessee preferred an appeal before us raising the following grounds of appeal:

“1. The Appellate Order of the Ld. Commissioner of Income Tax (Appeals)-7, Hyderabad is erroneous and bad both, on facts and on in Law.

2. On the facts and in the circumstance of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in not declaring the assessment order as void and invalid as same is made without proper jurisdiction. He ought to have considered the fact that, the scrutiny is LIMITED to the aspects authorised by CASS and whereas, the Ld. Assessing Officer has scrutinised the issues not authorised by such CASS order and therefore the assessment order to the extent of unauthorised issues is invalid and void as the same is violative of the jurisdiction.

3. On the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in not declaring in the Assessment Order as unsustainable, invalid and void as the same is made in contravention and violation of binding circular of CBDT in Instruction No.7/2014 dt.26.09.2014. He ought to have considered the fact that, the

CBDT has directed that the scope of enquiry by the Assessing Officer should be limited to verification of the aspects stated in the Limited Scrutiny Order and the Ld. Assessing Officer has travelled beyond the scope stated in the CASS without the approval of Pr. Commissioner of Income Tax in writing.

4. On the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in sustaining the assessment order rejecting the books of accounts maintained by the Appellant" and resorting to estimation of income without pin pointing the defects in the maintenance of such books of accounts. He ought to have considered the fact that, the weakness in maintenance of few expenditure vouchers will not make the books of accounts liable for rejection without explaining how such books of accounts could not be relied upon for the computation of correct taxable income.

5. On the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in estimating the income at a rate which is not practicable and achievable in the line of business of the Appellant. He ought to have considered the fact that, the peculiar nature of the business of the Appellant and additional statutory levies imposed have to be taken in to consideration in arriving at reasonable profit rate for estimation and the Ld. Commissioner of Income Tax further erred in not considering that the rate of profit cannot be uniform for all the assessee's in the line of business without considering the peculiar situations applicable to each assessee.

6. On the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in approving the disallowance @30,000/- made on adhoc basis in an arbitrary manner to the income declared under the electrical business alleging that certain expenditure is evidenced by self made vouchers. He ought to have considered the fact that the Ld. Assessing Officer had failed to identify the heads of expenditure which were considered by him for such lump sum adhoc disallowance and how he has arrived at such an amount for disallowance. In spite of the fact that, such verification of electricity accounts were not authorized for scrutiny under CASS.

7. Such other ground/grounds that may be urged at the time of the hearing of the appeal."

4. Ld.AR submitted that the case of assessee was selected for scrutiny to verify the bank deposits whether the deposits are more than the turnover. The Assessing Officer has verified the cash deposits and turnover and found correct. The Assessing Officer completed the assessment beyond the scope of scrutiny without any approval from Pr.CIT. Widening the scope of assessment is against the CBDT directives. He prayed that assessment may be quashed.

5. On the other hand, Ld. DR submitted that Assessing Officer has completed the assessment by estimating the revenue as the assessee failed to submit proper bills and documents. The Assessing Officer has not violated any procedure and he brought to our notice the findings of Ld.CIT(A) vis-à-vis the remand report submitted by the Assessing Officer before the CIT(A).

6. Considered the rival submissions and material on record. The assessment was selected to verify the bank deposits and turnover of the assessee whether they match. As the assessee is in the business of purchase and sale of liquor and electricals, it is a fact that assessee may not be able to maintain the sale bills as the sales are mostly on across the counter. But the purchases are from the registered source, mostly from Government agencies. It is not difficult to determine the actual sales. We notice that Assessing Officer has verified the expenses etc., which is not the mandate of limited scrutiny. The CBDT directives are binding on the

Assessing Officer and in case, Assessing Officer finds that the assessment has to be made on extensive basis due to the reason that there are incidences of tax evasion found. Assessing Officer can extend the assessment by taking due permission from CIT/Pr.CIT. In this case, there is no issue of any tax evasion and the Assessing Officer *suo motto* did the extensive assessment even though the mandate was to make limited scrutiny.

6.1. Considering the facts of the case, the assessee could not submit the sales bills due to the nature of business and Assessing Officer has not found any discrepancy in the bank deposits and turnover of the assessee. We are coming across so many cases of wine business, in which assessees were not able to submit proper vouchers due to the nature of business and mostly estimated @3%. The case before us also falls in the similar category and assessee was not able to maintain proper records and shown profit @2%. For the sake of judicial precedent, we are intended to proceed with the estimation but the issue before us is not on rejection of books or estimation of income. Before us, whether limited scrutiny mandate can be extended. As per the CBDT directive, Assessing Officer cannot do so without following proper procedure. In the given case, Assessing Officer has made extensive assessment without mandate. Therefore, we need to restrict ourselves to address this issue. However, we direct the Assessing Officer to accept the books of account since he has not found any discrepancies in verification of deposits and turnover as per limited mandate.

Even in case, Assessing Officer found discrepancy, he could have invoked Section 68. Therefore, the ground raised by assessee is allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 3rd April, 2019

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated 3rd April, 2019

TNMM

Copy to :

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C/o. M. Chandramouleswara Rao, Chartered Accountant,
Flat No. C-3, Skylark Apartment, Basheerbagh,
Hyderabad.*

2. The Income Tax Officer, Ward-1, Khammam.

3. CIT(Appeals)-7, Hyderabad.

4. Pr.CIT-7, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.