

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

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

**ITA No. 520/Hyd/2019
Assessment Year: 2015-16**

Manju Restaurant & Bar, vs. Income-tax Officer,
Hyderabad. Ward – 8(2), Hyderabad.

PAN – ABFFS8271F

(Appellant)

(Respondent)

Assessee by : Shri K.C. Devdas
Revenue by : Smt. Komali Krishna

Date of hearing : 02/07/2019
Date of pronouncement : 10/07/2019

ORDER

PER S. RIFAUH RAHMAN, A.M.:

This appeal filed by the assessee is directed against the order of CIT(A) – 2, dated 30/01/2019, Hyderabad for AY 2015-16.

2. Briefly the facts of the case are, the assessee-firm, engaged in the business of restaurant and bar, filed its return of income for the AY 2015-16 on 24/09/2015 admitting total income of Rs. 3,75,830/-. Subsequently, the case was selected for scrutiny under CASS and the assessment was completed u/s 143(3) of the Act on 07/12/2017 by determining the total income of Rs. 18,68,047/-. While doing so, the AO resorted to estimation of income from business @ 10% on stock put to sale as the assessee could not produce books of account and bills/vouchers in support of the expenses claimed.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) directed the AO to estimate at 3% of the goods sold in the case of wine shop and in the case of bar and restaurant the profits

are to be estimated at 8% of the goods sold. However, in the final para, he directed the AO to estimate @8% on stock put to sale of Rs. 2,36,94,697/-.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

"1. The Order of the Commissioner of Income tax (Appeals)-2, Hyderabad ("CIT(A")) is erroneous and unsustainable in law and on facts of the case.

2. The CIT(A) erred having held that the profit be estimated at 3% of the liquor stock put to sale ought to have clearly stated that the liquor stock put to sale was Rs. 80,69,693.

3. The CIT(A) ought to have clearly held that the estimation of Profit at 8% of the restaurant stock put to sale in Restaurant section was Rs. 5,63,299.

4. Any other grant(s) that may be urged at the time of Hearing."

7. Ground Nos. 1 & 4 are general in nature, hence, need no adjudication.

8. Considered the rival submissions and perused the material on record. As regards ground No. 2, the coordinate benches of this Tribunal consistently taking view that estimation of income at 3% of the cost of the goods sold is reasonable in the line of wine business. In this connection, we refer to the latest decision of the SMC bench in the case of Sri Karatam Laxmaiah in ITA No. 22/Hyd/2018, order dated 09/05/2018 wherein it was held as under:

"4. After hearing rival contentions I find that there is a cleavage of opinion between different benches of the ITAT on this issue as to whether the percentage should be 3% or 5%. As the decision in the case of Shri Late Mushkam, Adilabad (supra), and in the case of Shri Badri Srinivas and others Vs. ITO in ITA Nos. 1515, 1516, 1517 & 1518/Hyd/2017, dated 08.02.2018 which is the latest order's on this issue, I prefer to follow the same and direct the A.O to estimate the income of the assessee

@ 3% of cost of sales of stock for the impugned assessment year.”

8.1 In the case of Sri Venkateswara Wines in ITA No. 1206/Hyd/2015, dated 27/11/2015 for AY 2011-12, the coordinate bench 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 ITA.No.1198/Hyd/2015 Sai Venkateswara Wines, Secunderabad 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 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 AO in estimating the profit at 2.5% of the total turnover. Thus grounds of appeal No.2 & 3 are allowed.”

Therefore, we direct the AO to adopt 3% of the cost of goods sold as the income of the assessee relating to Wine business.

8.2 As regards ground No. 3, regarding estimation of income @ 8% of cost of sales in the case of Bar & Restaurant, we confirm the directions of CIT(A) as the same was in line with the provisions of section 44AD.

8.3 We noticed that the value of stock put to sale adopted by the AO and the value given in the grounds of appeal is different. AO is

directed to verify the same and estimate the profit on the actual value of stock put to sale of liquor and restaurant stock.

9. In the result, appeal of the assessee is allowed.
Pronounced in the open Court on 10th July, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 10th July, 2019

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Copy to:-

- 1) *M/s Manju Restaurant & Bar, C/o M/s Sekhar & Co., 133/4, RP Road, Secunderabad – 500 003.*
- 2) *ITO, Ward – 8(2), Hyderabad*
- 3) *CIT(A) – 2 Hyderabad.*
- 4) *Pr. CIT - 2, Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*