

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

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|---------------------------|
| ITA No.631/Bang/2019 |
| Assessment year : 2015-16 |

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| M/s. Kaveri Bar & Restaurant, No.7-5-628/8, Bolor, Mangalore. PAN: AAFFK 6227M | Vs. | The Income Tax Officer, Ward 1(3), Mangalore. |
| APPELLANT | | RESPONDENT |

| | | |
|---------------|---|--|
| Appellant by | : | Shri Narendra Sharma, Advocate |
| Respondent by | : | Shri Ganesh R. Ghale, Advocate & Stdg. Counsel for Dept. |

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|-----------------------|---|------------|
| Date of hearing | : | 14.10.2019 |
| Date of Pronouncement | : | 16.10.2019 |

ORDER

This appeal by the assessee is against the order dated 20.02.2019 of the CIT(Appeals), Mangaluru relating to assessment year 2015-16.

2. In ground Nos.2 & 3, the assessee has challenged the addition on account of Gross Profit (GP) in the business of sale of food by the assessee and the business of liquor by the assessee.

3. The assessee is a partnership firm. It is engaged in the business of running a bar and restaurant. For the AY 2015-16, the assessee filed a return of income declaring a total income of Rs.4,52,180. The AO noticed that the GP declared by the assessee for the AY 2015-16 was Rs.24,00,940 on turnover of Rs.2,71,87,495 which was only 8.83%

compared to the GP declared by the assessee of 17.81% in the immediately preceding AY viz., AY 2014-15. The AO was of the view that books of accounts were full of inconsistencies. The AO noticed that apart from selling liquor, the assessee started selling food also in a major way during the relevant previous year and therefore the GP margin ought to have been much higher than 17.81% that was declared in AY 2014-15. Thereafter, the AO prepared a segmental profit & loss account for soft drinks, food and liquor segments. The following chart gives the segmental results:-

Soft Drinks

| | | | |
|---------------|--------|---------------|--------|
| Opening Stock | 0 | Sales | 274207 |
| Purchases | 223890 | Closing Stock | 0 |
| Gross Profit | 50317 | | |
| 18.35% | 274207 | | 274207 |

Food

| | | | |
|---------------|--------|---------------|--------|
| Opening Stock | 0 | Sales | 274207 |
| Purchases | 223890 | Closing Stock | 0 |
| Gross Profit | 50317 | | |
| 18.35% | 274207 | | 274207 |

Liquor

| | | | |
|---------------|----------|---------------|----------|
| Opening Stock | 442815 | Sales | 24044057 |
| Purchases | 23593404 | Closing Stock | 2030850 |
| Gross Profit | 2038688 | | |
| 8.47% | 26074907 | | 26074907 |

4. From the above table, the AO firstly noticed that the GP in sale of liquor was under-stated. The AO also noticed that in the food segments, there were food sales, but there were no corresponding purchase of chicken, fish, grocery or vegetable. Following chart was given by the AO in this regard:-

| Month | Food Sales | Purchases of chicken | Purchases of fish, mutton and eggs | Purchases of grocery | Purchases of vegetable |
|-------|------------|----------------------|------------------------------------|----------------------|------------------------|
| April | 9410 | 2746 | 0 | 7359 | 0 |
| May | 11291 | 0 | 0 | | 0 |
| June | 8023 | 0 | 0 | 260 | 0 |
| July | 347486 | 0 | 0 | 0 | 0 |

5. The conclusion of the AO was that the books of account maintained by the assessee were not correct and complete. The AO also was of the view that normal margin in food industry was about 30% and the margin of 10.87% GP declared by the assessee was very low. For the above reasons, the AO rejected the books of account and estimated the profits of the assessee as follows:-

Food segment

“ However, for the purpose of the present assessment, it is proposed to estimate the Gross profit at 30% of the recorded sales at 8,60,769. Since you have declared G.P of Rs.3,11,937 the difference of Rs.5,48,832 is liable to be added to your income and no further deduction is admissible.”

Liquor segment

“ As regard the liquor segment it is seen that the G.P of Rs.20,38,688 declared on gross sales of Rs.2,40,44,057 is below the margin of 10 to 12% at which the products retail in wine shops. In the previous year, the G.P declared by you on liquor sales was 17.81%. Applying the same ratio for the current year gives

| | | |
|-------------------------------|---|--------------|
| G.P. on sales of 2,40,44,0457 | : | Rs.42,82,247 |
| Less: declared in return | : | Rs.20,38,688 |
| | | ----- |
| Deficit | | Rs.22,43,559 |
| | | ----- |

The above estimate is as per your own financial statements and is quite low as the margins in the restaurant business are not less than 25%. However, for the purpose of the present arrangement, it is proposed to bring to tax the above sum of Rs.22,43,559 as being the income arising on account of suppression of gross profit.”

6. Aggrieved by the aforesaid additions made to the total income, the assessee preferred appeal before the CIT(Appeals). The assessee reiterated its plea before the CIT(Appeals) that the assessee had in July, 2014 shifted the bar & restaurant from Sulthan Bathery Road to Urwa-Marigudi Road, Ashoknagar, a new location which was a residential and labour class dominated area with stiff competition from other operators selling their products at competitive rates. The assessee had to sell its products at a discount.

7. The assessee also submitted that the AO was not right in assuming that the assessee cannot sell below the MRP prices fixed by the Govt. for liquor sold by it. The assessee also pleaded before the CIT(A) that consumption of LPG is a factor considered by the AO in estimating profits of the food business. The assessee had pleaded before the CIT(A) that there was pilferage in LPG and that should not be the basis on which addition can be made in the food segment. The CIT(Appeals), however, confirmed the action of the AO for the following reasons:-

“5.8 The AR submitted copy of the price chart (menu) of the new location which has only the prices of food items. The menu did not contain the prices of liquor items. The AR did not submit the menu of the old location. Further no evidence was submitted in support of the claim that the liquor and food was sold at less than MRP prices. The AR also failed to submit any circular/instruction/ communication in support of the claim that the State Excise department fixes monthly target for litres of liquor to be purchased or else a hefty penalty would be levied and

also subject to cancellation of excise license. The AR has not submitted even the names of the Bar & Restaurants in the same locality not to talk of the financials of the comparables. The AR submitted that there are no comparable hotels in the nearby vicinity of Urwa-Marigudi Road, Ashoknagar so as to make a reasonable analysis of the turnover. However in the earlier submission, the AR submitted that the Appellant is forced to sell at discounted prices, in view of the stiff competition in the locality which goes against the earlier submission. The Appellant failed to substantiate its claim that liquor was sold at less than MRP price. Therefore, there is no merit in the submission of the Appellant/AR. The assessing officer has adopted GP ratio of the Appellant in the earlier year (17.81%). There is no dispute with regard to the GP working made by the assessing officer for the liquor retail at 9 to 14%. Taking into consideration, the fact that the Appellant is in bar business where the liquor is sold in pegs, the GP of 17.81% is very reasonable. The addition made is hereby confirmed.

5.9 Regarding the food segment, it is submitted that after the shift of the outlet, there was mismanagement with regard to overall procurement. especially with regard to LPG gas and no complaints were made since it was practically time barred and the management felt any legal process would be futile exercise since there was no written managerial agreement. The AR has not even mentioned the names of the employees who indulged in mismanagement. The submission is self-serving in nature and there is no merit in the contention of the AR. The AR has not submitted even the names of the Bar & Restaurants in the same locality not to talk of the financials of the comparables to work out the reasonable GP. The assessing officer adopted Gross Profit at 30% and arrived at the GP of Rs.8,60,769/- on the recorded food sales of Rs. 28.69 231 /-, which in my view is quite reasonable for the food industry. Therefore, the addition made is hereby confirmed.”

8. Aggrieved by the order of CIT(Appeals), the assessee has raised ground Nos.2 & 3 before the Tribunal.

9. The Id. counsel for the assessee reiterated the submissions made before the CIT(Appeals). The Id. DR relied on the order of CIT(Appeals).

10. After considering the rival submissions, I am of the view that the addition made in the liquor segment as well as in the food segment were justified for the various discrepancies pointed out by the AO. However, I am of the view that the quantum of addition made by the AO was excessive. In this regard, as far as liquor segment is concerned, I find that there is no dispute that the assessee shifted its bar & restaurant location from Sulthan Bathery Road to Urwa-Marigudi Road, Ashoknagar. The admitted position is that the new place of business was not an up-market compared to the earlier place and margins had to be compromised for getting the business. The assessee has shifted its business in the month of July, 2014 to the new place. These facts would have had some impact on the profit margins and the earlier year's profit margin cannot be compared. I am of the view that the GP rate of 12.5 % should be applied and the addition made by the AO is restricted accordingly.

11. As far as food segment is concerned, I find that the assessee has not been in a position to give proper explanation. There was no food sales reported commensurate with the usage of LPG. The margin shown by the assessee was extremely low. The books of account of food business were found to be not reliable inasmuch as there was no purchase shown, but sales recorded which is not possible in a food industry. I am, however, of the view that the GP rate of 30% adopted by the AO was excessive. In my view, the GP rate of 20% would meet the ends of justice in the given facts and circumstances of the case. I hold accordingly.

12. The other addition challenged in ground No.4 is the addition of Rs.2 lakhs as unexplained cash credit. This ground was not pressed before the CIT(Appeals) and therefore was dismissed as not pressed. Before us, the

ld. counsel for the assessee sought to plead that in ground No.5, he has asked for telescoping the addition on account of GP with the unexplained cash credit added u/s. 68 of the Act. I am of the view that the request for telescoping has to be accepted and the AO is directed to give telescoping effect while giving effect to this order, subject to the quantum of addition that may remain after the directions in this order on ground Nos.2 & 3.

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

Pronounced in the open court on this 16th day of October, 2019.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 16th October, 2019.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.