

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'SMC - B' Bench, Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

ITA No. 424/Hyd/2019
(Assessment Year: 2013-14)

Sh. Srinivas Narla Prop:Chamundeswari Wines Siddipet	Vs	Income Tax Officer Ward 1 Siddipet
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PAN: AEZPN8544F (Appellant)	(Respondent)
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For Assessee :	Shri T. Chaitanya Kumar, AR
For Revenue :	Shri Nilanjan Dey, DR

Date of Hearing:	30.12.2019
Date of Pronouncement:	30.12.2019

ORDER

This is assessee's appeal for the A.Y 2013-14 against the order of the CIT (A)-7, Hyderabad, dated 12.01.2018.

2. Initially the Tribunal had raised an objection that the appeal is barred by limitation as there is a delay of 319 days in filing of the appeal. However, Ld.DR has filed the report of the CIT(A)-7, Hyderabad stating that the copy of the order of the CIT(A) was returned unserved to their office and that the assessee was served with the appellate order on 16.02.2019. Taking the same into consideration, I hold that there is no delay in filing the appeal before the Tribunal.

3. 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 learned CIT (A) erred in confirming the order of the Assessing Officer in rejecting books of accounts u/s 145 of the Act and further erred in estimating the income @ 5% on liquor sales.

3. The learned CIT (A) ought to have observed that the appellant not derived income as per targeted sales.

4. The learned CIT (A) erred in confirming the order of the Assessing Officer in estimating the income @ 5% on cost of sales.

5. *The order of the learned CIT (A) in confirming the action of the AO in determining the total income at Rs.17,55,410/- as against the income admitted at Rs.4,82,970/-.*

6. *Any other ground that may be urged at the time of hearing”.*

4. As regards merits of the issue are concerned, it is against the estimation of income from the sale of liquor. The AO and the CIT(A) have estimated the income at 5% of the cost of goods put to sale.

5. The Ld.Counsel for the assessee prayed that the net profit may be estimated @ 3% of the cost of goods put to sale as held by the Tribunal in a number of cases.

6. The Ld.DR was also heard.

7. Having regard to the rival contentions and material placed on record, I find that in similar cases the Tribunal has been estimating the income at 3% of the cost of goods put to sale. For the purpose of clarity and ready reference, the relevant paras of the order of the Coordinate Bench of this Tribunal in the case of Sri Venkateswara Wines, Secunderabad in ITA No.1206/Hyd/2015 is reproduced hereunder:

“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 AO 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 same, the AO is directed to estimate the net profit at 3% of the cost of goods put to sale.

9. In the result, assessee's appeal is partly allowed.

Order pronounced in the Open Court on 30/12/2019.

Sd/-
(P. Madhavi Devi)
Judicial Member

dated : 30.12.2019

**gmv*

Copy to:

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- 3 CIT (A)-7 Hyderabad
- 4 Pr. CIT – 7 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order

1	Draft dictated on	30.12.2019
2	Draft placed before the author	30.12.2019
3	Draft placed before the second Member	
4	Draft approved by second Member	
5	Approved Draft comes to the Sr.PS	
6	Kept for Pronouncement	
7	File sent to Bench Clerk	