

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B - SMC", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
(THROUGH VIRTUAL HEARINIG)

ITA No.1354/Hyd/2018		
Assessment Year:2014-15		
Sh. Talasani Shankar Rao Yadav Hyderabad.	Vs.	ITO, Ward 10(4) Hyderabad.
PAN: ABSPT3247R		
(Appellant)		(Respondent)

Assessee by:	Sri B. Prabhakar, AR
Revenue by:	Sri Sunil Kumar Pandey, DR
Date of hearing:	29/10/2020
Date of pronouncement:	29/10/2020

ORDER

This is assessee's appeal for A.Y. 2014-15 against the order of CIT(A)-6, Hyderabad dated 27.04.2018.

This case was taken up for hearing through video conferencing on 29.10.2020 and both the parties were heard.

2. Brief facts of the case are that the assessee is an individual, engaged in the business of retail trade of Liquor and is the proprietor of M/s Shiva Restaurant and Bar. During the assessment proceedings, the AO requested the assessee to produce books of accounts but the assessee did not furnish the same stating that in this type of business it is not possible to maintain books of accounts. The AO, therefore, rejected assessee's books of accounts and estimated the net profit at 5%

of the cost of goods put to sale. Aggrieved, assessee preferred an appeal before the CIT(A), who not only confirmed the order of AO, but also enhanced the assessment to the extent of Rs.7,100/-.

3. Assessee is in second appeal before the Tribunal by raising the following grounds of appeal only on the estimation of profit in the liquor business @ 5% of the cost of goods put to sale:-

1. *The Appellant Assessee is in appeal against the Order of the CIT (Appeals)-6, Hyderabad wherein he has dismissed the prayer of the Appellant to consider and allow the Net Profit admitted by him from his Restaurant and Retail Wine Shop business located at hard labour operating area called Monda Market, Secunderabad.*
2. *The Learned Commissioner (Appeals) confirmed estimating the Net Profit at 5% of the goods put to sale instead of looking into the ground reality and the past history of the appellant wherein he was consistently admitting Net Profit around 1 =20% to 1 =50% from the products sold at his shop which is also called "JANATA BAR" to cater to the needs of Lower Income Group mostly consisting of Labour Class.*
3. *The Learned Commissioner (Appeals) instead of appreciating the facts and circumstances of the case which is distinctly different from the cases relied upon by him, concluded that "by exercising my discretionary powers, I am of the opinion that this is a fit case to estimate the profits at an higher rate. On the basis of this factual matrix, I deem it fit to estimate the net profit @ 5% of the cost of goods put to sale. In view of this, I don't find fault with the order of the Assessing Officer in estimating the net profit @ 5%. Thus, the grounds of appeal raised by the assessee are dismissed".*
4. *The Appellant Assessee submits that the Purchases are recorded and certified and there is No scope to assume lower turnover to grant the Assessing Officer the scheme of estimating profit on Stocks put to Sale by adopting a fancy Profit % margin. The Assessing Officer failed to recognize and appreciate the fact that the assessee sells low cost liquor items to low income group at low margin. It is held in Ravi Kumar Rawat Vs. ITO (2011)7 ITR (Trib) 593 (Jaipur) that without any independent enquiry in the assessee's case, the rejection of accounts itself was held unjustified and so was the additions.*

5. *The appellant submits that even where Books cannot be accepted and estimate of Income has to be made, the best judgment has to be made in a reasonable manner and not according to the whims and fancies of the Assessing Officer. It has to be rational, realistic and with due prudence which always differs from facts and circumstances of each of the case. This law of estimate is reiterated by the AP High Court in CIT Vs R. Narayana Rao (2011) 338 ITR 625 (AP) in a group of cases of Liquor Licenses.*

6. *The Appellant Assessee submits that in his own case for the Asst. Year: 2013-14 the CIT (A)-6, Hyderabad vide her Order 01.12.01.2017 in ITA No.0309/2015-16/CIT(A)6/16-17 directed to compute the Profit @3% vide Para 07.0 of her order which reads "it is seen that the Hon'ble ITAT, Hyderabad has held the estimation of income @3% of the cost of goods sold to be acceptable. As the issue is identical and no new facts have been brought by the Assessing Officer which may have a bearing on the case, respectfully following the ratio of the decisions in the case of Venkateshwara Wines and Sai Venkateshwara Wines (Supra), the Assessing Officer is directed to recomputed the profit @ 3% of the cost of goods sold" and this further gets support from the Order passed by this Hon'ble Bench vide ITA No.181/Hyd/2016, dt.20.07.2016 in the case of Secunderabad Wines, Secunderabad Vs. ITO Ward-10(1), Hyderabad.*

7. *Any other Grounds at the time of hearing.*

3.1. The Ld.Counsel for the assessee submitted that in assessee's own case for AY 2013-14 and in similar other cases the Tribunal had directed the to compute the net profit @ 3% of cost of goods put to sale. He, therefore, prayed that the Net profit may be estimated at 3% of cost of goods put to sale. He also relied upon various other decisions of the Tribunal wherein the Tribunal has directed the authorities to compute the Net profit at 3%.

3.2. Ld.DR, on the other hand, relied upon the orders of AO and CIT(A).

3.3. Having regard to rival contentions and also the material placed on record, I find that in Venkateswara Wines and Sai Venkateswara Wines, this Bench of the Tribunal (to which I am also signatory) has directed the AO to estimate net profit @ 3% of the cost of goods put to sale. The relevant paragraphs are reproduced here under:

"5. Having regard to the rival contentions and the material on record, we find that the assessee is involved in retail business of liquor and is not maintaining any books of account. 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 order dated 27.11.2015, 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 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 3 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”.

Respectfully following the decision of the Coordinate Bench (to which both of us are signatories), the AO is directed to estimate the net profit at 3% of the cost of goods put to sale. Accordingly, Ground no.2 is allowed.

3.4. Respectfully following the same, I deem it proper to direct the A.O. to estimate net profit at 3% of cost of goods put to sale.

4. In the result, assessee’s appeal is allowed.

Pronounced in the open Court on 29th October, 2020.

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 29th October, 2020.

**gm v*

Copy to:-

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2.	The I.T.O. Ward 10(4), Hyderabad.
3.	The JCIT, Range 10, Hyderabad.
4.	The Principal Commissioner of Income Tax-6 , Hyderabad.
5.	The Departmental Representative, ITAT, Hyderabad.
6.	Guard File