

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA Nos.1073 to 1077/Hyd/2019		
Assessment Years: 2011-12 to 2015-16		
Shri Puttiakula Prathap Reddy, Chittoor PAN:BCDPP8683G	Vs.	A.C.I.T. Circle 1(1) Tirupati
(Appellant)		(Respondent)
Assessee by:	Advocate Smt. S. Sandhya	
Revenue by:	Shri K.E. Sunil Babu, (CIT-DR)	
Date of hearing:	04/01/2023	
Date of pronouncement:	06/01/2023	

ORDER

Per Bench:

The above batch of 5 appeals filed by the assessee are directed against the separate orders dated 25.04.2019 of the learned CIT (A)-Tirupati, relating to A.Ys.2011-12 to 2015-16 respectively. Since common issues are involved in all these appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. All the above appeals were earlier dismissed by the Tribunal on the ground that the assessee has opted for Vivad-se-Vishwas Scheme. However, the Tribunal vide order dated 1.7.2022 in M.A. No.84 to 88/Hyd/2022 recalled its earlier order. Hence these are recalled matters.

3. First we take up appeal in ITA No.1073/Hyd/2019 for the A.Y 2011-12 as the lead case.

4. Facts of the case, in brief, are that the assessee is an individual and derives income from liquor business. He filed his return of income on 24.9.2011 declaring total income of Rs.2,14,605/- which was processed u/s 143(1) of the I.T. Act. Subsequently, a search u/s 132 of the I.T. Act was conducted in the case of Shri Puttiakula Muniratnam Reddy & Others on 15.12.2016 during the course of which certain books of account and other documents were seized. It was noticed that the material seized has a bearing on the total income of the assessee. Subsequently, the case of the assessee was notified to the Assessing Officer by the Pr. CIT vide order u/s 127 dated 2.2.2018. Accordingly notice u/s 153A r.w.s. 153C of the I.T. Act was issued and duly served on the assessee requesting him to furnish the return of income. The assessee in response to the same submitted that the return of income for the A.Y 2011-12 originally filed on 24.9.2011 may be treated as a return in response to the notice u/s 153A r.w.s. 153C of the I.T. Act. Thereafter, the Assessing Officer issued statutory notices u/s 143(2) and 142(1) of the Act in response to which the AR of the assessee appeared from time to time and filed the requisite details.

4.1 During the course of the assessment proceedings, the Assessing Officer noted that the assessee has shown sundry debtors of Rs.6,50,000/- in the balance sheet as on 31.3.2011. However, the assessee has not disclosed any interest income from sundry debtors. The Assessing Officer asked the assessee to

explain as to why interest @ 18% from sundry debtors should not be added to the total income of the assessee, since the same was admitted by one of the members of the group in the sworn statement at the time of search and such interest income was offered at more than 18% per annum for the A.Y 2016-17 by the assessee himself. The assessee objected to the same and stated that all the debtors will not pay interest and therefore, such a proposition is incorrect. However, the Assessing Officer did not accept the contention of the assessee and made addition of Rs.1,17,200/- to the total income of the assessee being interest income from sundry debtors.

5. Similarly, the Assessing Officer noted that the assessee has shown net profit of Rs.2,11,063/- which is 2.7% of the total sales of Rs.78,91,440/- from the sale of liquor. The Assessing Officer proposed to adopt the profit @ 8% of the turnover as per provisions of section 44AD on the ground that the assessee has admitted net profit @ 8% in the return of income filed for the A.Y 2015-16 in respect of liquor business. The assessee in response to the same submitted that the net income @ 5% on stock put to use is the maximum adopted by the Department and requested to adopt the same. However, in absence of any books of account for the impugned A.Y on the basis of which the net profit of Rs.2,11,063/- was arrived, the Assessing Officer estimated the net profit @ 8% of the total turnover and accordingly made addition of Rs.4,14,501/- being the difference between the profit arrived at by him and the profit disclosed by the assessee and added the same to the total income of the assessee.

6. There is one more addition of Rs.4.00 lakhs on account of opening capital. However, since the learned CIT (A) has deleted the addition, we are not concerned with the same. The Assessing Officer accordingly determined the total income of the assessee at Rs.11,45,764/-.

7. In appeal, as mentioned earlier, the learned CIT (A) deleted the addition of Rs.4. 00 lakhs on account of opening capital. So far as the profit from liquor business is concerned, the learned CIT (A) restricted the same to 5% of the turnover. He, however, sustained the addition made by the Assessing Officer on account of interest on sundry debtors at Rs.1,17,200/-.

8. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1. Interest on Sundry Debtors:

The Learned Commissioner of Income tax (Appeals) is not legally correct and proper in confirming the addition of Rs.1,17,200/-in Money lending business.

2. Liquor Business

The Learned Commissioner of Income Tax (Appeals) is not legally correct and proper in estimating income @5% on Stock put to use. The jurisdictional Income Tax Officer is estimating 3% Net Profit on Stock put to use. The appellant prays for estimating 3% instead of 5%.

The appellant craves leave to file additional statement of facts, if necessary, in support of grounds of appeal at the time of hearing.”

9. The assessee has also raised an additional ground challenging the validity of the order passed u/s 153C in absence of any incriminating material found during the course of search in all the 5 appeals. However, the learned Counsel for the

assessee did not press the additional ground for which the learned DR has no objection. Accordingly, the additional ground raised by the assessee in all the 5 appeals is dismissed as not pressed.

10. So far as the issue raised by the assessee challenging the estimation of profit @5% of the turnover is concerned, the learned Counsel for the assessee submitted that such estimation of profit @ 5% is not proper. Referring to the decision of the Vizag Bench of the Tribunal in the case of Shri K. Srinivasa Rao in ITA Nos.14 & 15/Viz/2020 order dated 8.4.2022 for the A.Y 2013-14, she submitted that the Tribunal under identical circumstances, has estimated the income @3% of the turnover. She accordingly submitted that the profit from liquor business should be estimated @3% of the turnover.

11. The learned DR, on the other hand, heavily relied on the order of the lower authorities. He submitted that the assessee during the course of assessment proceedings as well as appellate proceedings before the learned CIT (A) has admitted the profit @ 5% of the turnover. Further, the assessee has not maintained any books of account nor produced the same during the course of search proceedings or post search enquiries or during the course of assessment proceedings. Under these circumstances, the profit was rightly estimated at 5% of the turnover by the learned CIT (A) and therefore, the assessee should not have any grievance.

12. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT(A) and

the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case is engaged in liquor business and did not maintain any books of accounts nor produced any such books of accounts either during the course of search or post search enquiries or during the course of assessment proceedings for which the Assessing Officer estimated the profit at 8% of the turnover. We find the assessee before the Assessing Officer as well as the learned CIT(A) has requested for restricting the profit @5% of the turnover. Under these the circumstances, when the learned CIT(A) estimated the profit @5% of the turnover, the same in our opinion is justified and the assessee now cannot plead to restrict the profit @ 3% of the turnover. So far as the decision in the case of Karla Srinivasa Rao (Supra) is concerned, we find the Assessing Officer in the said case estimated the income @ 5% by rejecting the books of account, since the assessee failed to furnish the details of expenses claimed in the P&L account as well as the stock register. However, in the instant case, as mentioned by the Assessing Officer, neither the assessee has maintained any books of accounts nor any books of accounts were produced for verification either at the time of search proceedings or during the post search proceedings or assessment proceedings. Therefore, the same decision, in our opinion, is not applicable to the facts of the present case. Even otherwise also, the assessee during the Course of assessment proceedings as well as appeal proceedings before the learned CIT(A) had requested to adopt the net profit rate of 5%. Under these circumstances, we do not find any infirmity in the order of the learned CIT(A) restricting the profit rate at 5% of the turnover. The ground raised by the assessee on this issue is accordingly dismissed.

13. The second issue raised by the assessee in the ground of appeal relates to the addition of Rs.1,17,000/- being interest from sundry debtors.

14. After hearing both sides we find the assessee had not disclosed any interest income from sundry debtors. We find the Assessing Officer computed such interest @ 18% on the sundry debtors of Rs.6,50,000/- as on 31.3.2011 on the ground that the assessee himself had voluntarily offered interest income from sundry debtors at more than 18% per annum for A.Y 2016-17 and Shri Hema Kumar Reddy, one of the persons of the group, in his sworn statement recorded u/s 131 on 15.3.2017 in his reply to question No.12 had stated that the assessee group charges interest @ 18% p.a. uniformly. While doing so the Assessing Officer rejected the explanation of the assessee that all the debtors are not giving interest and therefore, no interest should be calculated for making addition to the total income of the assessee. We find in appeal, the learned CIT (A) upheld the addition made by the Assessing Officer. It is the submission of the learned Counsel for the assessee that such an addition of interest is not based on any incriminating material found during the course of search nor the same was stated by the assessee himself in any statement recorded from him. According to her, interest, if any, can be added only from A.Y 2016-17 and not for the impugned A.Y. It is the submission of the learned DR that when one of the members of the group had admitted that the assessee is charging interest @ 18%, therefore, such addition made by the Assessing Officer and sustained by the learned CIT (A) is justified.

15. We find some force in the argument advanced by the learned Counsel for the assessee. Admittedly, the addition was made on the basis of statement recorded u/s 131 dated 15.3.2017 from Shri P. Hema Kumar Reddy who in his answer to question No.12 had stated that the assessee group charges interest @ 18% per annum uniformly. However, the statement was not recorded from the assessee and the statement was recorded only on 15.3.2017. There is no iota of any evidence found during the course of search that the assessee has received any interest during the impugned A.Y nor the Assessing Officer questioned Shri P. Hema Kumar Reddy for the impugned A.Y. Nothing has been brought on record by the Assessing Officer that the debtors were questioned/confronted and that they have admitted to have given any interest to the assessee. Under these circumstances we are of the considered opinion that the addition of Rs.1,17,200/- being interest @ 18% from sundry debtors of Rs.6,50,000/- as on 31.3.2011 is not justified being added on surmises and presumptions. We, therefore, set aside the order of the CIT (A) on this issue and the grounds raised by the assessee on this issue are allowed.

16. In the result, appeal filed by the assessee is partly allowed.

ITA Nos. 1074 & 1077/Hyd/2019 – A.Y 2012-13 & 2015-16

17. The assessee in the grounds of appeal has challenged the addition of Rs.1,66,500/- and Rs.3,15,000/- respectively being interest from sundry debtors for the impugned two assessment years.

18. After hearing both the sides, we find that the above ground is identical to one of the issues raised by the assessee in ITA No.1073/Hyd/2019. We have already decided the issue and the ground raised by the assessee on this issue has been allowed. Following similar reasoning, the grounds raised by the assessee for both the years are allowed.

ITA No.1075 & 1076/Hyd/2019 – A.Y 2013-14 & 2014-15

19. The only issue raised by the assessee in the above two appeals relates to the estimation of profit at 5% on liquor business.

19.1 After hearing both the sides, we find the grounds raised by the assessee in the above two appeals are identical to one of the grounds raised by the assessee in ITA No.1074/Hyd/2019. We have already decided the issue and the grounds raised by the assessee on this issue are dismissed. Following similar reasoning, the grounds raised by the assessee are dismissed.

20. In the result, all the 5 appeals filed by the assessee are partly allowed .

Order pronounced in the Open Court on 6th January, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 6th January, 2023

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Puttiakula Prathap Reddy, Door No.27-48-13, M.B.T. Road, Punganur, Chittoor A.P
2	ACIT, Circle 1(1) K.T. Road, Tirupati, Chittoor
3	CIT (A) Aayakar Bhavan, KT Road, Tirupati 517501
4	Pr. CIT-Tirupati,
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order