

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ SMC ‘ Bench, Hyderabad**

BEFORE

SHRI LALIET KUMAR, JUDICIAL MEMBER

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| ITA No.429/Hyd/2023 | | |
| Assessment Year: 2016-17 | | |
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| Venkata Ramana Puram, 2-1752, LBS Road Piler, Chittoor District, Andhra Pradesh – 517248. PAN : AJNPP6019N. | Vs. | The Income Tax Officer, Ward 1(1), Tirupati. |
| (Appellant) | | (Respondent) |
| Assessee by: | | Ms. S. Sandhya, Advocate. |
| Revenue by: | | Sri Aravindakshan, Sr. A.R. |
| | | |
| Date of hearing: | | 12.09.2023 |
| Date of pronouncement: | | 12.09.2023 |

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2016-17 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) – Delhi dt.27.04.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, “the Act”).

2. The appeal filed by the assessee is barred by limitation by 53 days. The assessee has moved a condonation petition

explaining reasons thereof. I have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, I condone the delay and admit the appeal for hearing.

2. The grounds raised by the assessee reads as under :

“1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.

2. The learned Commissioner of Income-Tax (Appeals) erred in confirming the action of the Assessing Officer in making addition of Rs.41,33,484/-without considering the fact that the appellant carried on the business of liquor and the business turnover amounted to Rs.64,16,400/-.

3. The Assessing officer and the learned CIT (Appeals) presumed that no business activity was carried on by the appellant and that all the deposits made into the bank account are unexplained.

4. The learned CIT (Appeals) ought to have seen that the income admitted by her of Rs.4,20,160/- is from the trading in of the liquor and the turnover of the liquor business amounted to Rs.64,16,400/- which is also available with the appellant.

5. The learned CIT (Appeals) erred in confirming the action of the Assessing Officer in adding Rs.41,33,484/-.”

3. Facts of the case, in brief, are that assessee is an individual carrying on business of liquor and filed return of income for the Assessment Year 2016-17 declaring an income of Rs.4,20,160/- on 25-03-2017. Subsequently, the case was converted into limited security with regard to sources for cash deposits into bank accounts. During the course of assessment proceedings, Assessing Officer noticed that assessee did turnover of Rs. 64,16,400/- during the financial year 2015-16. When the assessee was called for source of cash deposits made in his bank accounts, he submitted that he managed two wine shops by name

Puram Wines and Star wines located at Pileru and Chinnagotugalu, and that they are the collections from those shops and also from his own wine shop and withdrawals from banks. However, the same was not accepted by the Assessing Officer, as no documentary evidences were submitted by the assessee to substantiate his claim. Hence, the Assessing Officer made an addition of Rs.41,33,484/- by adopting Peak Credit Method from transactions of bank account statements of assessee and accordingly, completed the assessment.

4. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal, which was subsequently, migrated to the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

5. Feeling aggrieved with the order of Id.CIT(A), assessee is now in appeal before me.

6. Before me, the learned Authorised Representative for the assessee submitted that the assessee is in the business of liquor. The learned Authorised Representative had drawn our attention to page 5 of the order of Ld.CIT(A), which is to the following effect:

“5. Majority of Sources for deposit of cash into banks are collections on behalf of the above wine shops ,collections from my own wine shop and with drawls from banks.”

6.1 Further, learned Authorised Representative has drawn our attention to the facts of case, mentioned at pages 4 and 5 of the order of Ld.CIT(A), which is to the following effect :

“ The appellant is an individual carrying on business of liquor and he filed return of income for the Assessment Year 2016-17 declaring an income of Rs.20,160 on 25-03-2017 Subsequently the case was converted into limited security with regard to sources for cash deposits into bank accounts. In response to Notice under section 142(1) reply was filed by the appellant based on the advice of his Tax Consultant. While submitting reply for sources of cash deposits, the facts were not correctly mentioned Further transactions reflected in the bank statements were not considered while submitting reply to sources of deposits. During the year under considered the appellant carried business of sale of liquor under Name and Style Balaji Wines for a period of three months as license for running business expired from 1st July, 2015 and did turnover of Rs. 64,16,400 during the financial year 2015-16 relevant to the assessment year 2016-17. Apart from appellants own business during the year under considered, the appellant managed two wine shops by name Puram Wines and Star wines located at Pileru and Chinnagotugalu as the owners of licenses requested him to look after the business as they are residing at Chintapalli and Bangalore. The appellant collected sale proceeds by way of cash to the tune of Rs2,22,37,500 on behalf of the above wine shops and deposited the same into the appellant’s bank accounts viz UBI and Canara Bank. Later the some amounts were transferred to their bank accounts and some amounts were spent directly towards purchase of stocks on their behalf. The above business entities are assessed to Income-tax and all transaction are reflected in their return of income sources for deposit of cash into banks are collections on behalf of the above wine shops, collections from my own wine shop and with drawls from banks. Cash Flow Statement explaining sources for cash deposits into bank accounts was filed. The Assessing Officer completed the assessment under Section 143(3) of the I.T. Act on 27-12-2018. While doing so the Assessing Officer made addition of Rs.41,33,484 by adopting Peak Credit Method from transactions of bank account statements. It is against the said assessment of the Assessing Officer the appellant filed the present appeal.”

6.2 It was the contention of the learned AR that the Assessing Officer despite knowing the above said case of assessee,

has not verified either the bank statements of the assessee or the affidavits of the owners of the said two wine shops. In the appellate proceedings, also the Ld.CIT(A) confirmed the addition made by the Assessing Officer merely relying on the peak credit method as derived by the Assessing Officer.

7. Per contra, the Ld. D.R. relied on the orders of lower authorities.

8. I have heard both sides and perused the material available on record. In the present case, assessee had not produced any evidence in support of his case before the lower authorities. It is only before us, by way of evidence, learned Authorised Representative for the assessee has filed some material in the form of bank statements and affidavits of the owners of said two wine shops. However, the CIT(A) had no occasion to examine this evidence, as it was filed for the first time before me. However, there was certain procedure to follow to file the evidence before the Tribunal, which was not followed by the learned Authorised Representative for the assessee. However, in interests of justice, considering the totality of the circumstances and the submissions of the learned AR, I hereby admit the evidence now filed before me which are in the form of bank statements and affidavits subject to the payment of cost of Rs.5,000/- (Rupees Five Thousand only) to be deposited in P.M. Relief Fund within two months from the date of order.

9. Having admitting the evidence now filed by the assessee before me, I deem it proper to remand back the matter to the file of Ld.CIT(A) for the purposes of verification of the evidence filed before me. Thus, I remand back to the file of Ld.CIT(A) with a direction to verify whether any license was granted by the authorities in the name of these two shops, whether the assessee can run these shops on behalf of the owners or these two shops are run by the assessee as a benami-holder. All these facts are required to be examined by the Ld.CIT(A) while adjudication of the case. The assessee is also directed to incorporate and file all the documents as and when called for by the Ld.CIT(A). Accordingly, this appeal is remanded back to the file of Ld.CIT(A) with the above said observations. Thus, the appeal of the assessee is allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 12th September, 2023.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 12th September, 2023.
TYNN/sps

Copy to:

| S.No | Addresses |
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| 1 | Venkata Ramana Puram, 2-1752, LBS Road Piler, Chittoor District, Andhra Pradesh – 517248. |
| 2 | The Income Tax Officer, Ward – 1(1), Tirupati. |
| 3 | Pr.CIT, Tirupati. |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order