

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC-'A' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

<b>ITA No. 442/Bang/2024</b>
<b>Assessment Year : 2020-21</b>

M/s. Balaji Enterprises, No. 24, Tank Bund Road, Lingarajapuram, Bangalore – 560 086. <b>PAN: AAIFB1406H</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 6(3)(1), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Mallaha rao .K, Advocate
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel for Dept.

Date of Hearing	:	01-08-2024
Date of Pronouncement	:	07-08-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by the assessee against the order of NFAC, Delhi dated 16.10.2023 for A.Y. 2020-21.

**2. Brief facts of the case are as under:**

**2.1** The assessee is a Firm engaged in the Liquor Business. Return of income for the A.Y. under reference was filed by the assessee declaring Loss of Rs.2,60,36,871/-. The assessee has disclosed low income from receipts (liquor) on which TCS has been deducted. Ld. AO noticed that the assessee has shown low income in order to reduce its profit/taxable Income. Therefore, in order to verify the correct income, the various notices have been issued to the assessee by the Ld.AO, but the assessee could not comply with the same. As the assessee was unable to furnish complete detail of stock, it filed fictitious stock that was prepared to satisfy the banks from which the assessee firm took loans. The assessee was unable to explain and justify his contention. The Ld.AO therefore made addition on the basis of average net profit of the assessee firm for last 3 immediate previous years.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

**2.2** The Ld.CIT(A) without giving opportunity of being heard to the assessee, dismissed the claim of the assessee by observing as under:

*“6. Grounds no. 1 to 9 of the appeal are against the single issue, i.e. estimation of the net profit rate by the AO on the basis of shortage of stock shown by the appellant in its books of account. Since, all the grounds of the appeal pertain to different dimensions of this single issue, all of them are taken together for discussion and decision.*

*6.1. I have considered carefully the submission of the appellant in view of the assessment order passed by the Id. AO. The Id. AO has asked the reasons for*

*unprecedented huge loss incurred by the appellant. In response, the appellant submitted that the business of the partnership firm was handled by father and mother of the present partners and entire activities were managed by their father who passed away due to Covid-19 on 06-08-2020. After his death, both of his sons who are now partner of the appellant firm could not handle the business affairs properly. Secondly, the business was closed after declaration of lock down due to Covid 19 on 23.03.2020 onwards. Thirdly there was a huge variation of stock in the books and actual stock. So based on the actual stock position there is huge losses are reflected in the books of accounts. Further, the appellant firm has submitted that after death of father when both sons who are the succussing partner have taken over the business, they found that there is huge stock showed which was not actual. Based on the advice of the legal experts and valuation we have showed the actual stock which was resulted in low income. The Id. AO asked item wise detail of stock, but the appellant firm just furnished incomplete detail stating that the business was operating at loss and to show the profitability the stocks are declared at higher values and huge stocks were shown which were not available physically. A liquor business is fully controlled by the Excise Department and the stock details is required to intimate to the Excise Department regularly. The Id. AO had asked to furnish the copy of stock register maintained by the appellant for Excise Department for the year under consideration. However, after receiving the show cause notice only one page of the register was submitted by the appellant. During the appellant proceedings also, the appellant firm did not provide complete position of the stock.*

*6.2. From the facts of the case, it appears that the present partners of the appellant firm have emphasized that there is loss due to the sudden death of their father who was the key person to look after the business. From the submission of the appellant, it is clear that their father passed away on 06.08.2020 whereas this case pertains to the financial year 2019-20. Thus, the contention of the appellant that sudden demise of the father of the partners was the reason for huge loss during the AY under reference is baseless and illogical. The contention that Covid 19 had affected the business badly during the year under consideration is also not acceptable, as in the last week of the financial year, lockdown was implemented. The sale of the business was increased substantially in*

*the year under reference. Thus, the main reason for incurring abnormal suppression of stock as shown by the appellant. There is no expiry date for liquor, thus, the loss of stock for this reason is not possible. The contention of the appellant that the stock was deliberately inflated to avail loans from the banks in the preceding financial years and during the year under reference, actual stock was shown cannot be accepted in absence any supporting documentary evidences. Moreover, the appellant has failed to furnish the complete details of stock filed with the excise department. In such circumstances, Id. AO is justified to take average of the net profit rates three preceding years to estimate the net profit rate for the year under reference. In view of the facts of the case I am of considered opinion that the Id. AO has rightly worked out the net profit rate at 3.97% on purchase and made addition of Rs. Rs.3,09,63,676/- to the returned total loss of Rs. 2,52,73,008/- as shown the appellant firm in its return of income. Therefore, the impugned assessment order is sustained and grounds no. 1 to 9 of the appeal are dismissed and not allowed.”*

Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

**3.** At the outset, the Ld.AR submitted that there is a delay of 87 days in filing the present appeal before this *Tribunal*.

**3.1** In the affidavit, it is submitted that the representative of the assessee was suffering from illness due to which the appeal could not be presented before this *Tribunal* within the period of limitation. The Ld.AR submitted that, the representative of the assessee were husband and wife amongst which one of the partners expired during covid period. It is submitted that before the Ld.CIT(A), the assessee could not represent due to such conditions that persisted. The Ld.AR prayed that assessee has a

good case on merits and great prejudice will be caused to the assessee in the event the issues are not decided on merits.

**3.2** On the contrary, the Ld.DR relied on the orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

**4.** It is noted that the order passed by the Ld.CIT(A)/NFAC is without proper representation due to the death of the one of the partners. It is also noted that the delay in filing the present appeal before this *Tribunal* is due to the illness of the partner and nothing contrary to what has been submitted in the affidavit has been brought on record by the Ld.DR.

We are of the opinion that the circumstances existed in case of the assessee is bonafide and there exists reasonable cause in delay to file the present appeal before this *Tribunal* that deserves consideration.

**Accordingly, the delay in filing the present appeal before this *Tribunal* stands condoned.**

**5.** On merits, as the assessee has not been able to represent its case before the Ld.CIT(A) properly and considering the fact that the notices were issued to assessee during the covid period, the issue deserves to be addressed based on the evidences filed by assessee. In the present facts of the case, the addition by the Ld.AO is based on estimation of the sales made by the assessee.

We note that the stock registered needs to be properly verified in order to consider the claim of assessee. We therefore remand the issues to the Ld.AO. The assessee is directed to furnish the relevant documents which shall be verified by the Ld.AO in accordance with law. Needless to say that proper opportunity of being heard must be granted to assessee.

**Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.**

**In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.**

**Order pronounced in the open court on 07<sup>th</sup> August, 2024.**

Sd/-  
(WASEEM AHMED)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 07<sup>th</sup> August, 2024.  
/MS /

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

By order

Assistant Registrar,  
ITAT, Bangalore