

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No. 1933/Bang/2025
Assessment Year: 2018-19

Devadas Anup, 25.1 Main, 8 th Cross, Prashanthnagar, Bengaluru – 560 079. PAN – AIZPD 3448 E	Vs.	The Income Tax Officer, Ward – 6(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Guruswamy H, ITP
Revenue by	:	Shri Ganesh R Ghale, Advocate – Standing Counsel for Revenue

Date of hearing	:	28.01.2026
Date of Pronouncement	:	02.02.2026

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The present appeal, filed at the instance of the assessee, is directed against the order passed under section 250 of the Income Tax Act, 1963 (hereafter the Act) by the National Faceless Appeal Centre – NFAC (hereafter the Id. CIT(A)) dated 18th June 2025 bearing Appeal No. NFAC/2017-18.

2. The assessee has raised following grounds of appeal:

"1. The impugned Order u/s. 250 of the Act dated: 18-06-2025 passed by the Ld. CIT(A), NFAC, Delhi is opposed to law, - facts and circumstances of the case.

*2. The Ld. CIT(A) NFAC has erred in confirming the Addition made by the AO amounting to Rs.18,05,258/- without appreciating the Merchandiser Agreement dated 25-04-2014 executed between the assessee and the Merchandiser where the assessee was entitled only for fixed amount of Rs.50,000/- per month and Merchandiser as liable to file the IT Return in respect of amount drawn by him being the profit.
Rs. 4,94,641/-*

3. The Ld. CIT(A) NFAC has erred in holding that the Assessee was responsible for the liability of Tax despite the Merchandiser agreement without appreciating the fact that he Assessee was bound by Merchandiser agreement for a fixed amount of Rs.50,000/- per month.

4. The Ld. CIT(A) has erred in confirming the addition of Rs. 18,05,258 /- estimated on purchases of Rs.3,61,05,162/- and not on sales without appreciating the fact that the purchase of goods was an expenditure without any profit element.

5. The Ld. CIT(A) has erred in confirming the addition of Rs. 18,05,258 /- estimated on purchases but mentioned as Sales and the same was accepted in the Appellate Order as an inadvertent mistake which does not vitiate the validity of the Assessment Order.

6. Without prejudice to the Ground No. 2 to 5 it is urged that the CIT(A) ought to have deleted the returned income of Rs. 11,03,886/- which is subsumed in the estimated income.

*7. The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.
Total Tax Effect - Rs.4,94,641/-*

3. The issue raised by the assessee on the grounds of appeal are interconnected which pertains to addition of Rs. 18,05,258/- made on account of estimated profit from the liquor business.

4. The relevant facts are that the assessee, an individual, is engaged in liquor business in the name and style of M/s Vinayaka Wines duly holding licence obtained from Karnataka Excise Department. As per the assessee's claim, earlier he himself was carrying on the liquor business. However, from year 2015-16 onwards, the assessee lent the liquor

license in favour of certain lessees through a merchandise agreement who are carrying on the business on his behalf.

5. The first merchandise agreement entered into by the assessee with one Shri B.S. Anil Kumar in the year 2014 effective from 1st May 2014 to 30th June 2017 which further extended till October 2017. As per the agreement, the assessee received fixed amount of Rs. 50,000/- per month from the said party for letting out the liquor license. The second agreement was entered into with one Shri B Lokesh effective from 1st October 2017 till 30th September 2020 and the assessee as per the said agreement was entitled to receive fixed amount of Rs. 60,000/- per month from the said party.

6. For the year under consideration, the assessee filed return of income under section 139(1) of the Act declaring total income of Rs. 11,03,886/- which included liquor business income i.e. income from licence merchandise for Rs. 6,25,000/- only.

7. The case was selected for scrutiny assessment. During the assessment proceedings, the AO observed that the assessee in the year under consideration has shown sales to both the merchandisers on cost-to-cost basis which is detailed as under:

1. Sri B.S. Anil Kumar	Rs. 3,61,05,162/-
2. Sri B Lokesh	Rs. 3,54,84,883/-
Total	Rs. 7,15,90,045/-

7.1 The AO found that the sales shown to merchandiser Sri B Lokesh were duly recorded as purchase, sale and inventory in the books of said merchandiser and the income was declared therein. However, no such

income was declared by the first merchandiser Sri B.S. Anil Kumar from the liquor business of Vinayaka Wines. Accordingly, the AO issued notice under section 133(6) of the Act seeking various details and information.

7.2 In response to the notice issued under section 133(6) of the Act, Sri B.S. Anil Kumar confirmed about existence of merchandise agreement during year for the period from 1st April 2017 to 31st October 2017. However, regarding the income/profit on the sale liquor purchased from the assessee, he stated that the profit on such sales has been booked and offered to tax by the assessee i.e. Sri Anup Devdas and not by him.

7.3 Accordingly, the AO concluded that the profit on purchase of liquor of Rs. 3,61,05,162/- from Karnataka State Beverage Corporation Limited- KSBCL which was shown by the assessee as sold to Sri B.S. Anil Kumar is neither offered by the merchandiser nor by the assessee. The AO held that the assessee is license holder and purchases from KSBCL were made in his name therefore it was the responsibility of the assessee to disclose the profit or loss on such purchases. Therefore, AO, because of merchandiser's confirmation that the assessee is liable to offer profit on impugned purchases, proceeded to estimate 5% of the purchases and accordingly made addition of Rs. 18,05,258/- (5% of Rs. 3,61,05,162/-) to the total income of the assessee.

8. The aggrieved assessee preferred to file appeal before the Ld. CIT(A).

9. Before the Ld. CIT(A) the assessee submitted that stock of the liquor can be purchased from government-controlled excise outlet only and in the name of license holder only. Therefore, during the year stock was purchased from KSBCL in his name which he transferred to merchandiser Sri B.S. Anil Kumar and Sri B Lokesh on cost-to-cost basis duly recorded in his books of account. The assessee submitted that as per the agreement, the merchandiser is responsible for maintaining stock, sales and profit and book-keeping as per the requirement of excise law and other laws. The assessee claimed that merely purchases made in his name does not mean that he is running the business and earning profit on sales. As such he is only entitled to fixed amount per month which has been duly accounted for and offered to tax. Accordingly, the assessee argued that estimation of profit on the purchases made and transferred to merchandiser Sri B. S. Anil Kumar by the AO is unjustified.

9.1 Besides, the assessee also submitted that in previous year the revenue had accepted fixed income from merchandise agreement. Therefore, consistency should follow. Further, in the year under consideration identical agreement has been made with two different merchandisers, the revenue has accepted income from one merchandiser Sri B Lokesh whereas the Revenue has not accepted fixed income of first merchandiser Sri B.S. Anilkumar. Hence, the AO has taken contradictory stand.

10. However, the Ld. CIT(A) after considering the facts in totality confirmed the addition made by the AO by observing as under:

7.2 I have carefully considered the facts of the case, the assessment order, and the written submissions of the appellant. The liquor business is governed

by the Karnataka Excise Act, under which licences are granted in the name of specific individuals. The licence holder remains ultimately responsible for the entire business conducted under the licence. The merchandiser agreements entered into by the appellant are private arrangements assigning certain operational responsibilities to third parties. However, the existence of such agreements cannot override statutory responsibilities imposed on the licensee under both Excise and Income Tax laws. The Hon'ble Karnataka High Court in the case of **CIT v. A.S. Krishnaswamy Mudaliar [(1964) 53 ITR 122 (SC)]** has held that private arrangements cannot defeat the charging provisions of the Income-tax Act. The income is to be taxed in the hands of the person on whom the right, title, and licence is conferred. Similarly, in **McDowell & Co. Ltd. v. CTO [(1985) 154 ITR 148 (SC)]**, it has been held that tax planning arrangements that are colorable devices must be disregarded in determining the real nature of transactions.

7.3 It is undisputed that liquor worth Rs. 3,61,05,162/- was purchased from KSBCL in the name of the appellant. The lessee, Shri B.S. Anil Kumar, categorically admitted during proceedings u/s 133(6) that he neither accounted for the purchases nor offered any profit from such sales in his return of income. Thus, there is no evidence on record to suggest that the income from these sales was assessed in the hands of any other person. The plea that profit belonged to the merchandiser is therefore not acceptable, as it would otherwise result in complete escapement of income from taxation. The Hon'ble Supreme Court in the case of **Kedarnath Jute Mfg. Co. Ltd. v. CIT [(1971) 82 ITR 363 (SC)]** laid down that entries in the books of account are not determinative of tax liability. The real nature of income and accrual governs taxability, not the manner of recording.

7.4 While the assessee has argued that similar treatment was accepted in earlier years, it is however not known whether any scrutiny assessments were carried out in those years. Even otherwise, there is no res judicata in income-tax proceedings. Each assessment year is independent, and findings in one year are not binding in subsequent years unless the facts remain identical. In the present year, fresh facts have come to light during scrutiny showing that neither the assessee nor the merchandiser offered the income to tax. Thus, consistency argument does not apply.

7.5 The assessee contended that estimation, if any, should be on sales and not on purchases. However, in the absence of complete disclosure of sales, estimation based on known purchases is a permissible method. In **CIT v. British Paints India Ltd. [(1991) 188 ITR 44 (SC)]**, the Hon'ble Supreme Court upheld estimation of income where proper accounts are not maintained or full disclosures are not made. In this case, once it is established that the sales arising from purchases of Rs. 3,61,05,162/- were not offered to tax, estimation of income @5% on such purchases is justified and reasonable, considering the nature of business and gross margins prevalent in the liquor trade.

7.6 While there is minor inconsistency in the drafting of the computation portion, it is evident from reading the assessment order as a whole that the Assessing Officer has estimated 5% profit on purchases of Rs. 3,61,05,162/-. The computation section inadvertently referred to "sales", but this does not vitiate the validity of the addition.

11. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

12. Before us the learned AR filed a paper book running from pages 1 to 27 and reiterated the assessee contention from the proceeding before the learned CIT(A).

13. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

14. We have heard the rival contentions of both the parties and perused the materials available on record. The undisputed facts are that the assessee is a license holder under the Karnataka Excise Act and had entered into merchandise agreements with two parties, namely Shri B.S. Anil Kumar and Shri B. Lokesh, under which the assessee was entitled only to a fixed monthly amount for permitting the use of the license. It is also a matter of record that for the year under consideration, the assessee disclosed such fixed receipts in the return of income and that identical arrangement with the second merchandiser, Shri B. Lokesh, has been accepted by the Assessing Officer without any estimation of profit on purchases routed through him. This differential treatment, on identical facts and under similar agreements, has not been properly explained by the Revenue.

14.1 We further note that the assessee has consistently maintained that the liquor purchased in his name from KSBCL was transferred to the merchandisers on cost-to-cost basis and that the responsibility of effecting sales, maintaining stock, recording transactions and earning

profits or losses rested with them as per the contractual terms. The mere fact that purchases had to be made in the name of the license holder, owing to statutory requirements under excise law, cannot by itself lead to the automatic conclusion that the assessee carried on the trading activity or earned business profits therefrom, particularly when the assessee has shown only the fixed license consideration and the Revenue has accepted the same arrangement in the case of the second merchandiser.

14.2 Coming to the estimation of profit at 5% on purchases of ₹3,61,05,162/-, we find that such estimation has been made solely on the premise that the merchandiser Shri B.S. Anil Kumar did not offer the profit in his return of income. This, in our considered view, cannot be sufficient ground to fasten the trading profit on the assessee when the contractual arrangement, past conduct of the parties and acceptance of similar transactions in the same year with another merchandiser all indicate that the assessee's role was confined to earning a fixed license fee. The Revenue has not brought on record any material to show that the assessee in fact carried out the retail activity, controlled day-to-day operations or earned margins on sale of liquor.

14.3 We also find force in the assessee's plea that once books of accounts, recording cost-to-cost transfer and fixed receipts have not been rejected and no specific defects have been pointed out therein, but resorting to estimation on purchases becomes unwarranted. Estimation is a measure of last resort and must rest on cogent materials showing suppression of income by the assessee himself. In the present case, such material is absent. The action of the authorities below in selectively

applying estimation only in respect of one merchandiser, while accepting the identical arrangement with the other, also goes against the principle of fairness and consistency.

14.4 In view of the totality of the facts and circumstances, we are of the considered opinion that the authorities below were not justified in estimating profit of 5% on purchases of ₹3,61,05,162/- and in making the consequential addition of ₹18,05,258/- in the hands of the assessee. The same is accordingly directed to be deleted. Thus, the grounds raised by the assessee on this issue are allowed.

15. In the result, the appeal of the assessee is allowed

Order pronounced in court on 2nd day of February, 2026

Sd/-

(KESHAV DUBEY)

Judicial Member

Bangalore

Dated, 2nd February, 2026

/ vms /

Sd/-

(WASEEM AHMED)

Accountant Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore