

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गाराव, न्यायिक सदस्य एवं**  
**श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष**  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A.No.96/Vizag/2016**  
(निर्धारण वर्ष / Assessment Year: 2011-12)

Tangudu Jogisetty Srikakulam [PAN: AACHT 2438M] (अपीलार्थी / Appellant)	Vs.	ITO, Ward-2, Srikakulam (प्रत्यार्थी / Respondent)
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**आयकर अपील सं./I.T.A.No.97/Vizag/2016**  
(निर्धारण वर्ष / Assessment Year: 2011-12)

Kuppili Bala Parameswara Rao Visakhapatnam [PAN: BBBKP0622B] (अपीलार्थी / Appellant)	Vs.	ITO, Ward-1, Anakapalle (प्रत्यार्थी / Respondent)
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**आयकर अपील सं./I.T.A.No.98/Vizag/2016**  
(निर्धारण वर्ष / Assessment Year: 2011-12)

Tangudu Santha Rao, Srikakulam [PAN: ACYPT 7626F] (अपीलार्थी / Appellant)	Vs.	ITO, Ward-1, Srikakulam (प्रत्यार्थी / Respondent)
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**आयकर अपील सं./I.T.A.No.102/Vizag/2016**

(निर्धारण वर्ष / Assessment Year: 2011-12)

Kothakota Bhanu Murthy  
Srikakulam  
[PAN: BLQPK7494E]  
(अपीलार्थी / Appellant)

Vs.

ITO, Ward-2,  
Srikakulam

(प्रत्यार्थी / Respondent)

**आयकर अपील सं./I.T.A.No.103/Vizag/2016**

(निर्धारण वर्ष / Assessment Year: 2011-12)

Padmanabhuni Satish,  
Visakhapatnam  
[PAN: AXDPP 5916C]  
(अपीलार्थी / Appellant)

Vs.

ITO, Ward-1,  
Anakapalle

(प्रत्यार्थी / Respondent)

**आयकर अपील सं./I.T.A.No.113/Vizag/2016**

(निर्धारण वर्ष / Assessment Year: 2011-12)

Simma Vykunta Rao,  
Srikakulam  
[PAN: AZXPS7056P]  
(अपीलार्थी / Appellant)

Vs.

ITO, Ward-1,  
Srikakulam

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by  
प्रत्यार्थी की ओर से / Respondent by

: Shri S.V. Satyanarayana,AR

: Shri K. Ravi, DR

सुनवाई की तारीख / Date of hearing

: 25.05.2016

घोषणा की तारीख / Date of Pronouncement

: 02.06.2016

## आदेश / O R D E R

### **PER G. MANJUNATHA, Accountant Member:**

These six appeals filed by the different assessees are directed against the separate, but identical orders of CIT(A), Visakhapatnam dated 21.12.2015 and it pertains to the assessment year 2011-12. Since, the facts are identical and issues are common, they are clubbed, heard together and disposed off, by way of this common order for the sake of convenience.

2. The facts extracted from ITA No.96/Vizag/2016 are that the assessee is a HUF carrying on the business of purchase and sale of IMFL in the name and style of "M/s. Appannammatalli Wine Shop" has filed its return of income for the assessment year 2011-12 on 28.12.2011 declaring total income of ₹ 6,53,240/-. The return was processed u/s 143(1) of the Act. Subsequently, the case has been selected for scrutiny and accordingly, notice u/s 143(2) of the Act dated 28.8.2012 was issued. In response to notice, the authorized representative appeared from time to time and furnished books of accounts and other relevant information called for. During the course of assessment proceedings, the A.O. noticed that the net profit declared by the assessee is quite less when compared to the nature of business carried on and also the total

turnover achieved for the year under consideration. Therefore, issued a show cause notice and asked to justify the low net profit declared with necessary evidences for sales and purchases along with expenditure claimed in the Profit & loss account. In response to notice, the assessee furnished books of accounts and other details called for. The A.O., considering the details furnished by the assessee, observed that the assessee has not maintained any stock register and also sales bills do not contain quantitative and qualitative details, and hence, the net profit admitted could not be accepted. With these observations, issued a show cause notice and asked to explain why the books of accounts should not be rejected and profit shall not be estimated @ 20% of total purchases.

3. In response to the show cause notice, the assessee has filed written submission and contended that the net profit proposed by you is excessive when compared to the nature of business. The assessee further submitted that it has maintained regular books of accounts and also bills & vouchers in respect of purchase and sales, therefore, your proposed action of rejection of books of accounts is not correct. As regards the estimation of net profit of 20% on purchases, the assessee submitted that the proposed estimation of net profit of 20% is quite high and also contrary to the decision of jurisdictional ITAT. It was

further submitted that it is in the business of dealing in IMFL products and the business is controlled by the State Government through Andhra Pradesh State Beverages Corporation Ltd. and the prices of the products have been fixed by the State Government. The assessee being a licensee of the State Government cannot sell the products over and above the MRP. The State Government while fixing the MRP of the goods has allowed a gross margin of 20 to 25%. The assessee further submitted that it has reported a gross profit of more than 26%, which is in line with the rate fixed by State Government. In support of its arguments relied upon the decision of ITAT `B' Bench Hyderabad in the case of Kanakadurga Wines Vs. ITI in ITA No.591/Hyd/2011 dated 28.7.2011.

4. The A.O. after considering the explanations furnished by the assessee held that the books of accounts maintained by the assessee are not susceptible for verification. The assessee has not maintained stock register and also sales bills issued by the assessee not contains quantitative and qualitative details of sales. In view of the unverifiable nature of books of accounts, the A.O. rejected the books of accounts u/s 145 of the Act and estimated the net profit of 20% on total stock put for sale. While doing so, the A.O. has relied upon the decision of Hon'ble Andhra Pradesh High Court in the case of CIT Vs. R. Narayana Rao in

ITA No.3/Vizag/2003 dated 21.6.2011, wherein the Hon'ble A.P. High Court held that estimation of net profit at 16% on purchase price would be reasonable.

5. Aggrieved by the CIT(A) order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee reiterated the submissions made before the A.O. The assessee further submitted that it is into the business of dealing in IMFL which was controlled by the State Government through A.P. State Beverages Corporation Ltd. The A.P. State Beverages Corporation Ltd. while fixing the MRP of the goods has allowed 20 to 25% margin on purchases. It is further submitted that it has reported a gross profit of 26% which is in line with the gross profit margin allowed by the State Government and hence the net profit declared for the year should be accepted. The A.R. further submitted that while estimating the net profit of 20%, the A.O. relied upon the judgement of Hon'ble A.P. High Court, which was rendered in the context of sale of arrack whereas it is into the business of dealing in IMFL where the margin of profit is quite less and also which was controlled by the State Government. Therefore, the case law relied upon by the A.O. cannot be made applicable to the business of the assessee.

6. The CIT(A) after considering the explanations furnished by the assessee, scaled down the estimation of net profit from 20 to 10%. The CIT(A) further observed that the assessee has not substantiated the book results with any evidences. The assessee failed to maintain stock register and also the sale bills issued by the assessee are not contains any details with regard to the quantitative and qualitative details. The CIT(A) further observed that series of raids conducted on liquor traders by the Anti Corruption Bureau at various places in Andhra Pradesh reveals that the liquor traders have marked up price of the alcoholic beverages by as much as 30% to 40% higher than the maximum retail price fixed by the State Government. Therefore, considering the fact that the retail trader sell liquor at 30% to 40% higher than the MRP and also resorted to lose sale of liquor and other facts and circumstances of the case, direct the A.O. to estimate the net profit of 10% on purchase price. Aggrieved by the CIT(A) order the assessee is in appeal before us.

7. The Ld. A.R. for the assessee submitted that the CIT(A) is erred in estimating net profit of 10% on total purchase put for sale. The A.R. further submitted that the issue involved in this appeal is squarely covered by the decision of ITAT, Visakhapatnam bench in various judgements, wherein the ITAT has upheld the estimation of net profit of

5% of purchases net of all deductions. Therefore, requested to direct the A.O. to estimate the net profit of 5% on total purchases. On the other hand, the Ld. D.R. strongly supported the order of the CIT(A).

8. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The A.O. estimated net profit of 20% on stock put for sale. The A.O. was of the opinion that the assessee has not maintained proper books of accounts and vouchers in support of purchases and sales. The A.O. further observed that the assessee has failed to maintain stock registers and books of accounts maintained by the assessee are not susceptible for verification, therefore rejected the books of accounts and estimated net profit of 20% by relying upon the decision of Hon'ble A.P. High Court. It is the contention of the assessee that the net profit estimated by the A.O. is quite high when compared to the nature of business carried on by the assessee. It is further submitted that the case law relied upon by the assessee is not applicable to the facts of the present case. The case before the Hon'ble A.P. High Court was that the assessee is into the business of trading in arrack, whereas it is in the business of dealing in IMFL. The assessee further contended that IMFL trade was controlled by the State Government through A.P. State Beverages Corporation Ltd. and the prices of the products are fixed by



the State Government. The assessee being a license holder of State Government cannot sell the products over and above the MRP fixed by the State Government. We find force in the arguments of the assessee for the reason that the A.O. has estimated the net profit by relying upon the decision of A.P. High Court in the case of CIT Vs. R. Narayana Rao in ITA No.3 of 2003 which is rendered under different facts. The A.P. High Court has considered the case of an arrack dealer, whereas, the assessee is into the business of dealing in IMFL. Therefore, we are of the view that the A.O. was not justified in relying upon the judgement, which was rendered under different facts to estimate the net profit. On the other hand, the Ld. A.R. for the assessee, relied upon the decision of ITAT, Visakhapatnam bench in the case of T. Appalaswamy Vs. ACIT in ITA No.65 & 66/Vizag/2012. We have gone through the case laws relied upon by the assessee in the light of the facts of the present case and finds that the coordinate bench of this Tribunal, under similar circumstances held that estimation of 5% net profit on purchases is reasonable. The relevant portion of the order is reproduced hereunder:

*"3. We have heard the parties, perused the orders of the revenue authorities as well as other materials on record. It is the contention of the Ld. A.R. that the estimation of profit at 16% is high and excessive considering the normal rate of profit in this line of business. Whereas, the Ld. D.R. supported the order of the CIT(A). Having considered the submissions of the assessee, we are of the view that the issue is no more res integra in view of a series of decisions of the ITAT Hyderabad bench in similar cases. The coordinate bench in case of ITA No.127/Hyd/12 and*

*others dated 18.05.2012 as well as a number of other cases have held that profit in case of business in Indian made foreign liquor has to be estimated at 5% of the purchases made by the assessee. Therefore, following the decision of the ITAT Hyderabad bench, we set aside the order of the CIT(A) and direct the assessing officer to estimate the profit from the wine business of the assessee by applying the rate of 5% of the purchases made net of all other deductions. The assessing officer should also bear in mind that in no case the income determined should be below the income returned."*

9. Considering the facts and circumstances of this case and also respectfully following the ratios of coordinate bench, we are of the view that the net profit estimated by the A.O. by relying upon the decision of Hon'ble A.P. High Court (supra), which was rendered under different facts is quite high. On the other hand, the assessee relied upon the decision of coordinate bench and the coordinate bench under similar circumstances estimated the net profit of 5% on total purchases net of all deductions. No contrary decision is placed on record by the revenue to take any other view of the matter than the view so taken by the coordinate bench. Therefore, we direct the A.O. to estimate the net profit of 5% on total purchases net of all deductions. Ordered accordingly.

10. The facts and issues involved in ITA Nos.97,98,102, 103 & 113/Vizag/2016 are identical to ITA No.96/Vizag/2016. Therefore, for the reasons recorded in the preceding paragraphs, we allowed the appeals filed by the assessee.

11. In the result, the appeals filed by the assessee in ITA Nos.96,97,98,102,103 & 113/Vizag/2016 are **allowed**.

The above order was pronounced in the open court on 2<sup>nd</sup> Jun'16.

Sd/- (वी. दुर्गराव) <b>(V. DURGA RAO)</b> न्यायिक सदस्य/ <b>JUDICIAL MEMBER</b>	Sd/- (जी. मंजुनाथा) <b>(G. MANJUNATHA)</b> लेखा सदस्य/ <b>ACCOUNTANT MEMBER</b>
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विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 02.06.2016

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – Shri Tangudu Jogisetty, Prop: Appannammatalli Wines, C/o Sri Venkata Sai Modern Rice Mill, Kotha Road Junction, Thotada, Srikakulam
2. अपीलार्थी / The Appellant – Shri Kuppili Bala Parameswara Rao, Prop: Sri Santhi Sai Wines, D.No.1, Balighattam, Narsipatnam, Visakhapatnam
3. अपीलार्थी / The Appellant – Shri Tangudu Santha Rao, IMFL Dealer, Market Road, Narasannapeta, Srikakulam District
4. अपीलार्थी / The Appellant – Kothakota Bhanu Murthy, Prop: Venkata Sainadh Wines, S/o Dasu Naidu, H.No.2-74, Main Street, Solikiri Village, Baleru Mandal, Bamini Post, Srikakulam District.
5. अपीलार्थी / The Appellant – Padmanabhuni Satish, Prop: Vaishnavi Happy Liquor, Bhaligattam, Visakhapatnam Dist.
6. अपीलार्थी / The Appellant – Simma Vykunta Rao, S/o Ramanujulu, D.No.2-275, Potrinivalasa Vill., Peddapadu Post, Srikakulam Dist.
7. प्रत्यार्थी / The Respondent – The ITO, Ward-1, Srikakulam
8. प्रत्यार्थी / The Respondent – The ITO, Ward-2, Srikakulam

9. प्रत्यार्थी / The Respondent – The ITO, Ward-1, Anakapalle

10. आयकर आयुक्त / The CIT-2, Visakhapatnam

11. आयकर आयुक्त (अपेक्षित) / The CIT (A)-2, Visakhapatnam

12. विभागाध्यक्ष प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /  
DR, ITAT, Visakhapatnam

13. गार्ड फ़ाइल / Guard file

आदेशानुसार / BY ORDER

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वरिष्ठ निजी सचिव (Sr.Private Secretary)  
आय कर अपीलीय अधिकरण, विशाखापटणम /  
ITAT, VISAKHAPATNAM