IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER

ITA No. 417/VIZ/2015
(Asst. Year : 2011-12)

Billapudi Sriram Das, C/o KSS Sharma, C.A., D.No. 12-5-25(A), New Colony, Anakapalle, Visakhapatnam.	Vs.	ITO, Ward-1, Anakapalle.
PAN No. AZJPS 6952 K (Appellant)		(Respondent)

Assessee by	:	Shri K.S.S. Sarma – FCA
Department By	:	Shri T. Satyandham - DR
Date of hearing	:	30/12/2016.
Date of pronouncement	:	03/01/2017.

O R D E R

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Visakhapatnam, dated 29/10/2015 for the Assessment Year 2011-12.

2. Facts of the case, in brief, are that the assessee was carrying on business of purchase and sale of IMFL (Indian made Foreign Liquor), filed return of income declaring total income of Rs. 4,64,440/-. The case of the assessee was selected for security and assessment was completed u/s 143(3) of the Act by estimating net profit at 20% of the stock put to sale.

3. On appeal, the Ld. CIT(A) scaled down to 10% and directed the A.O. to re-compute the income at 10% of purchase price.

4. On being aggrieved, assessee carried matter in appeal before the Tribunal. At the time of hearing, the Ld. Counsel for the assessee has submitted that the issue involved in this appeal is squarely covered by the decision of the coordinate bench of this Tribunal where the Tribunal has scaled down the estimation of profit from 10% to 5% in the case of Tangudu Jogisetty in ITA No.96/Vizag/2016 by order dated 2.6.2016.

5. On the other hand, the Ld. D.R. strongly supported the orders passed by the authorities below.

6. I have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The only issue involved in this appeal is estimation of profit in respect of IMFL business carried by the assessee. In this respect, the coordinate bench of the Tribunal in the case of Tangudu Jogisetty (supra) has considered the profit level in the line of business and decided that 5% of purchase price is reasonable profit margin in the line of IMFL business and directed the A.O. to re-compute the profit of the assessee. The relevant portion of the order is extracted as under:

> *"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."

7. In view of the above decision of the coordinate bench of the Tribunal, I direct the A.O. to estimate the profit of the assessee at 5% of purchase price. Accordingly, this ground of appeal raised by the assessee is allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order Pronounced in the open Court on this 3rd day of January, 2017.

Sd/-
(V. DURGA RAO)
Judicial Member

Dated : January, 2017.

vr/-

Copy to:

1. *The Assessee*

   Billapudi Sriram Das, C/o KSS Sharma, C.A., D.No. 12-5-25(A), New Colony, Anakapalle, Visakhapatnam.

2. *The Revenue*

   ITO, Ward-1, Anakapalle.

3. *The CIT-2, Visakhapatnam.*
4. *The CIT(A)-2, Visakhapatnam.*
5. *The D.R.*
6. *Guard file.*

By order

Senior Private Secretary,
I.T.A.T., Visakhapatnam.