THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.T.T.A.Nos. 128 & 134 OF 2005

DATED 21ST NOVEMBER, 2017

ITTA.No.128 of 2005:

Between:

Akula Bullabbai and Enterprises, Tanuku … Appellant

AND

Income Tax Officer, Ward-2, Tanuku … Respondent

ITTA.No.134 of 2005:

Between:

Akula Bullabbai & Others … Appellants

AND

Income Tax Officer, Ward-2, Tanuku … Respondent

Counsel for the appellants : Sri Y.Ratnakar

Counsel for the respondent : Sri B.Narasimha Sarma
Sr. Standing Counsel for
Income Tax

THE COURT MADE THE FOLLOWING

COMMON JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

Both these appeals arise out of common order dated 29.11.2004 in ITA.No.85/V/99 and ITA.No.88/V/99 on the file of the Income Tax Appellate Tribunal, Visakhapatnam (for short, 'the Tribunal').

2. The assessees are Abcari (Excise) Contractors for the assessment year 1992-1993. The Assessing Officer, while passing of the orders under Section 143(3) read with Section 250 of the Income Tax Act, 1961, estimated gross profit and allowed only 50% of expenses as allowable deductions. The assessees were unsuccessful before the Commissioner of Income Tax (Appeals) and also before the Tribunal. Hence, they filed these appeals.

3. Sri Y.Ratnakar, learned counsel for the appellants/assessees, submitted that in **CIT v. R.Narayanarao (AP)[1],** a Division Bench of this Court disposed of the appeals arising out of the subject assessment year i.e., 1993-94. The operative part of the said judgment reads as under:

> "As seen from the purchase price and sales recoveries, there is a wide variation. In some cases, it is more than nine (9) times

[1] (2011) 338 ITR 625 (AP)

and in some other cases less than seven (7) times. Given the fact that there is no price fixed by the Government for sale of arrack and it is generally a seller's market, to assume that the gross profit would be at 1% of the estimated sales, in our considered view, is low. Accepting the total sale price at eight (8) times of the purchase price, we feel it appropriate to hold that 2% of the estimated sale value, after considering all types of deductions mentioned hereinabove, would be reasonable. Indeed, the Division Bench of this Court in *A.Sanyasi Rao's case {1989} 178 ITR 31 (AP)* found that in some cases the profit margin was higher in arrack business. Therefore estimating the net profit at 2% of the estimated sales or 16% of the purchase price (the Tribunal estimated at 8% of the purchase price) would not be unreasonable.

In the result, for the above reasons, we set aside the orders of the Income Tax Appellate Tribunal impugned in these appeals directing that the net profit be estimated at 2% of the estimated sales or 16% of the purchase value whichever is higher. All the appeals shall stand disposed of accordingly. In the facts and circumstances of the case, we make no order as to costs."

4. Learned counsel for the appellants requested for passing a similar order in these cases also. Sri B.Narasimha Sarma, learned Senior Standing Counsel for Income Tax Department, has fairly not opposed this submission.

5. Following the aforementioned judgment, these appeals are also allowed with the direction that the Assessing Officer shall make fresh assessment based on the above reproduced part of the judgment in **R.Narayanarao** (supra).

C.V.NAGARJUNA REDDY, J.

T.AMARNATH GOUD, J.

Date: 21-11-20-17.
TJMR