(2009) 10 KL CK 0046

In the High Court Of Kerala

Case No : S.T. Rev. No. 169 of 2009

State of Kerala APPELLANT

Vs

New Swapna Bar and Restaurant RESPONDENT

Date of Decision : 22-10-2009

Acts Referred:

Citation : (2010) 30 VST 472

Hon'ble Judges : V.K.Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Mohammed Rafiq, Government Pleader, for the Appellant; V.P. Sukumar, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—Revision is filed by the State challenging the order of the Tribunal accepting the gross profit of 29.18 per cent declared in the accounts of the respondent-assessee. We have heard Government Pleader appearing for the petitioner and Counsel appearing for the respondent. The assessing officer on noticing that gross profit returned is not consistent with the sale bills, made estimation of gross profit at 55 per cent. However, on appeal, the appellate authority granted a quantum relief by reducing the gross profit to 37 per cent against which State has not filed appeal. However, on further appeal by the assessee, Tribunal reduced the gross profit to the conceded extent of 29.18 per cent. While the Government Pleader submitted that the Tribunal''s order amounts to acceptance of books of accounts which were found to be defective by the assessing officer, the assessee''s case is that few bills relied on by the assessing officer cannot be the basis for raising the gross profit substantially. According to him, the maximum gross profit found in the bills was 32 per cent. Admittedly, the respondent is engaged in retail liquor trade in the bar hotel. The entire liquor is sourced by all bar hotels from one single agency which is the Beverages Corporation Ltd. Therefore, purchase cost is same for all the bar hoteliers. However, there may be price variation on retail sale by bar hotels because some are star hotels and others are ordinary hotels where the facilities, location, etc., are different. Further, competition in the same area also may lead to competitive rate in the retail sale of liquor. Above all these, Counsel for the assessee rightly pointed out that existence of a retail outlet of the Beverages Corporation very near to the respondent''s hotel is yet another reason for reduced margins charged by them in comparison with other hotels. Even though this argument is quite tenable, we still feel the order of the Tribunal is not tenable because the assessing officer noticed that the rate charged in the bill is in excess of the gross profit conceded by the assessee. The Tribunal by accepting the gross profit returned by the assessee, virtually directed acceptance of books of accounts which were admittedly defective. So much so, interference with the Tribunal''s order is called for. However, we do not think this is a fit case for remanding the matter and in our view, considering the gross profit seen confirmed in several cases coming before us, the rate of gross profit fixed by the first appellate authority is quite reasonable. We, therefore, modify the order of the Tribunal by restoring the gross profit at the rate fixed by the first appellate authority, i.e., 37 per cent. The S.T. revision case is allowed to the extent indicated above.

