

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.545/PUN/2013

निर्धारण वर्ष / Assessment Year : 2007-08

Prabhat Dairy Pvt. Ltd.,
Ranjankhol, Tal: Shrirampur,
Dist. Ahmednagar
PAN: AACCP8872E

.... अपीलार्थी/Appellant

Vs.

The Income Tax Officer,
Ward 2, Ahmednagar

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri S.N. Puranik
प्रत्यर्थी की ओर से / Respondent by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 16.07.2019	घोषणा की तारीख / Date of Pronouncement: 01.08.2019
--	--

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-1, Pune, dated 07.12.2012 relating to assessment year 2007-08 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following ground of appeal:-

- 1) *Hon. Commissioner (Appeals) erred in allowing the partial relief on transport charges paid to persons covered under section 40A(2)(b) it may please be allowed in full.*

3. The issue arising in the present appeal is against disallowance of milk transportation charges paid to persons covered under section 40A(2)(b) of the Act.

4. Briefly, in the facts of the case, the assessee company was engaged in the business of collection of dairy milk and had processing unit, through which collected milk was packed and sold. The assessee was also engaged in trading of cattle feed and other by-products. The Assessing Officer took up the case of assessee for scrutiny. On verification of audit report in column 19, Note No.5, the assessee had declared the transactions with sister concern in respect of purchase of milk and transport payments. On verification of milk transportation expenses debited to Profit and Loss Account, it was noted that payment of ₹ 1.24 crores was made to four directors and one family member. The Assessing Officer on verification of vouchers, books of account, etc. noted that transportation charges were paid on self drawn vouchers and further, no supporting evidence in the form of bills raised by related parties were available with the assessee. The Assessing Officer also noted that none of the directors and the family members had issued any bills of their own to the assessee. The Assessing Officer doubted the genuineness of the claim of payment and on further examination of vouchers for payment, it was noted that though the assessee gave advance payment to transport contractors but no TDS was deducted. The assessee pointed out that tax was deducted on final payment and not out of advance payment. In respect of genuinity of payments made to directors and family members, the assessee produced the crate registers and gave details of date-wise, destination-wise dispatches made by assessee. The assessee had only produced registers for the period April and May, 2006. Lots

of discrepancies were noted and statements of one of the directors and manager were recorded. The Assessing Officer in final analysis observed that out of total milk transportation expenses of ₹ 2.70 crores, ₹ 1.24 crores was paid to the directors and family members. The said payments were hit by provisions of section 40A(2)(b) of the Act. Since the assessee had failed to produce any supporting and satisfactory evidence, the Assessing Officer held the assessee not to have discharged the onus cast upon it. From the furnished details, it was noted that in the year under consideration, the assessee had sold 41473364 litre of cow milk. It had claimed ₹ 2,70,42,882/- as transportation expenses. From these details, it was clear that the assessee had incurred ₹ 0.65 per litre as transportation expenses i.e. ₹ 2.70 crores ÷ 4.14 crores litres. Reference was made to transportation expenses claimed by Malganga Dairy Farm for transportation of 2.46 crores litres, against which milk transportation expenses were ₹ 1.28 crores. In other words, ₹ 0.52 per litre was incurred as transportation expenses. The Assessing Officer in this regard observed that there was excess expenditure of ₹ 0.13 per litre. By applying the said ratio to total milk sold of 4.14 crores of litres, the Assessing Officer worked out sum of ₹ 53,91,927/- as excessive payment. The Assessing Officer held that the said excess payment was made to directors and other family members, who failed to establish that payment made to them was genuine. Hence, the Assessing Officer disallowed sum of ₹ 53,91,927/- under section 40A(2)(b) of the Act.

5. The CIT(A) vide its consolidated order while deciding the issue raised in instant assessment year vide para 7 at page 11 onwards decides the issue. The first plea of assessee before the CIT(A) was that the Assessing Officer had unfairly compared the assessee's case and Malganga Dairy Farm. The first

distinction was drawn that Malganga Dairy Farm transported milk with the help of ice to distances within 70-80 kms of their factory, whereas the assessee transported milk in insulated vans to far off places like Mumbai, Surat, Nashik, Shahada, Parbhani, etc. The hiring charges of insulated vans were considerably higher than tempo hiring charges, therefore, the assessee had incurred more expenditure as compared to Malganga Dairy Farm. The CIT(A) asked the Assessing Officer to verify whether two cases were comparable on apple to apple basis. However, no response was received from the Assessing Officer. The CIT(A) vide para 7.2 at page 13 observed that *Be that as it may, it is seen that even if we take a look at the expenditure incurred by the appellant itself on milk transportation expenses paid to directors with the milk transportation expenses paid to other transporters, it is clear that there is a considerable difference in the market rate vis-à-vis rate paid to the Directors and family members.* The CIT(A) perused the agreement for transport filed though different vehicles and transportation charges charged by other transporters and by the directors of assessee company. The assessee was asked to furnish breakup of litres of milk sold / supplied through vehicles owned by directors. In reply, the assessee furnished a chart showing the quantity transported by the directors and their family members, which is tabulated under para 7.3 at pages 13 and 14 of appellate order. The CIT(A) observed that 2.02 crores of litres of milk was transported in the vehicles belonging to directors and their family members and payment @ ₹ 1.62 per litre works out to ₹ 1.25 crores. As against the same, cost of transporting the balance milk sold during the year [4.14 crores of litres (-) 2.02 crores of litres] i.e. 2.12 crores of litres through other transporters at cost of ₹ 1.46 crores was ₹ 1.45 per litre. The CIT(A) also notes that the transporters had also given insulated vehicles to the

assessee company on hire as had the directors. The CIT(A) noted that there was difference of ₹ 0.17 per litre which had been paid in excess to the fair market value of services i.e. transportation charges paid to directors / family members. The CIT(A) then worked out the disallowance under section 40A(2)(b) of the Act at ₹ 34,41,704/- (2.02 crores of litres x ₹ 0.17 per litre). The CIT(A) further noted that the Assessing Officer had erroneously applied the rate of difference between market price and price paid, to the entire quantity of milk sold / supplied during the year, though both directors and other transporters i.e. on 4.14 crores of litres. He curtailed the disallowance to transportation through the directors and family members i.e. 2.02 crores of litres of milk and excess payment of ₹ 34,41,704/- was added in the hands of assessee.

6. The assessee is in appeal against the order of CIT(A).

7. After taking us through the facts of the case, the learned Authorized Representative for the assessee stressed that the Assessing Officer had not confronted any information with regard to Malganga Dairy Farm to the assessee. Then, referring to the order of CIT(A), it was pointed out that CIT(A) had applied the ratio of litres / rupees, whereas in fact the ratio to be applied is rupees / litres. Consequently, rate would work out to 62 paise to related parties and 69 paise to unrelated parties. The learned Authorized Representative for the assessee has filed tabulated chart and in this regard has referred to para 7.4 of CIT(A), who had calculated the milk transportation charges per rupee at 1.62 litres for related parties and 1.45 litres to unrelated parties. On the other hand, the assessee says that in case rate is adopted correctly, then the cost of

transportation paid to related parties was less than unrelated parties, hence it was not excessive. He fairly admitted that the same may be verified by the Assessing Officer and addition be accordingly, deleted.

8. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

9. We have heard the rival contentions and perused the record. The issue which arises in the present case is the disallowance made under section 40A(2)(a) of the Act on account of payment by the assessee company to its directors against transportation charges. The provisions of section 40A(2)(a) of the Act are attracted where a person makes payment to the related parties as defined in section 40A(2)(b) of the Act at a price which is higher than the market price. In this regard, the Revenue authorities have to come to a finding after the onus is discharged by the assessee to establish that it has not paid any price higher than the market price to the related parties. The Assessing Officer in the present case while working the disallowance had considered total transactions of assessee company for transportation of milk, whereas the same should be restricted only to the transaction of milk through the directors. In this regard, the CIT(A) has re-worked the disallowance in the hands of assessee. We find merit in the working of CIT(A) to this extent. However, while working out the cost of milk transportation per litre, the CIT(A) by an error has adopted the figures after taking the ratio of milk transported in litres per rupee, in fact the ratio to be applied is rupees/per litres transported. The assessee has filed the tabulation in this regard and the payment to related parties works out to 62 paise per litre as against 69 paise per litre paid to unrelated parties. In such

circumstances, there is no merit in making any disallowance under section 40A(2)(b) of the Act. For this limited purpose, the Assessing Officer is directed to verify the working of assessee and delete the addition made in the hands of assessee. The ground of appeal raised by assessee is thus, allowed.

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

Order pronounced on this 1st day of August, 2019.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 1st August, 2019.

GCVSR

आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Pune;
4. The CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune