

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2541/Del./2018  
(Assessment Year : 2013-14)**

M/s. Farmgate Agro Milch P. Ltd., vs. ACIT, Circle 9 (1),  
9, Park Area, Gangeshwar Dham Road, New Delhi.  
Karol Bagh, New Delhi – 110 005.

**(PAN : AABCF6486D)**

**(APPELLANT)**

**(RESPONDENT)**

**ASSESSEE BY : Shri K. Sampath, Advocate  
Shri V. Raja Kumar, Advocate**

**REVENUE BY : Shri Samporn Anand Seth, Senior DR**

Date of Hearing : 23.02.2021

Date of Order : 03.03.2021

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, M/s. Farmgate Agro Milch P. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 27.03.2018 passed by the Commissioner of Income-tax (Appeals)-34, New Delhi qua the assessment year 2013-14 on the grounds inter alia that :-

**“On the facts and in the circumstances of the case and in law the ld. CIT (A) erred in :**

- 1. Confirming the action of the Assessing Officer in making an addition of Rs.2,50,000/- on account of travelling expenses on ad hoc basis;**
  - 2. Not giving clear finding and only directing the Assessing Officer to recompute the income tax charged on assessed income as per assessment order at Rs.1,66,00,401/-."**
2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee company during the year under assessment was into the business of manufacturing and trading of dairy products. Assessing Officer (AO) from the profit & loss account noticed that the assessee has debited a sum of Rs.42,75,093/- on account of travelling and conveyance expenses and substantial portions of the bills and vouchers under these expenses were internally vouched and, therefore, personal element cannot be ruled out. Finding no explanation on the part of the assessee, AO disallowed a lump-sum amount of Rs.2,50,000/- out of the total expenses of Rs.42,75,093/- claimed by the assessee and thereby assessed the total income at Rs.1,66,00,401/-.
2. Assessee carried the matter before the Id. CIT (A) by way of filing an appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.
3. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO.1**

4. Bare perusal of the impugned order passed by the Id. CIT (A) confirming the lump sum addition of Rs.2,50,000/- made by AO goes to prove that both AO as well as Id. CIT (A) have made/confirmed the addition on the basis of conjecture and surmises without bringing on record any such fact calling for disallowance either on the basis of defects in the books of account, which have otherwise been accepted or on the basis of any other material.

5. Assessee company has given complete detail of the travelling expenses claimed, available at pages 4 to 26 of the paper book, qua which no fault has been pointed out by the AO as well as Id. CIT (A). Ld. CIT (A) in para 5.3.4 of the impugned order specifically admitted the fact that, *“it is a fact that AO has not pointed out any specific defects in the internal bills and vouchers maintained by the assessee and produced before the AO during the course of proceedings.”* So, merely on the basis of conjecture and surmises that there could be a personal element involved in the travelling expenses, no such disallowance is permissible under law. In these circumstances, disallowance made by the AO and

confirmed by the Id. CIT (A) is not sustainable in the eyes of law, hence deleted and ground no.1 raised by the assessee is allowed.

### **GROUND NO.2**

6. Undisputedly, assessee's income has been assessed at Rs.1,66,00,401/- but the AO has wrongly charged the income-tax on Rs.2,25,04,372/-.

7. While deciding this issue, Id. CIT (A) returned the following findings :-

**“5.4. Ground no. 3 is against AO's action of wrongly charging income tax on Rs.2,25,04,372/- as against the assessed income at Rs.1,66,00,401/-. AR has submitted that the assessed income was of Rs.1,66,00,401/-, however AO has wrongly adopted taxable income as Rs.2,25,04,372/-.**

**5.4.1. DECISION:I have considered the written submissions. AO is directed to adopt the correct figure of assessed income as per records/assessment order and accordingly compute tax liability of the appellant.”**

8. Perusal of the impugned order passed by the Id. CIT (A) as well as assessment framed u/s 143 (3) of the Income-tax Act, 1961 (for short 'the Act') by the AO shows that income has been assessed at Rs.1,66,00,401/- but it is surprising how and under what circumstances AO has adopted the taxable income at Rs.2,25,04,372/-. In our considered view, when Id. CIT (A) has already directed the AO to adopt the correct figure of assessed income as per assessment order dated 31.03.2016, AO was duty bound to adopt the correct figure of assessed income. In these

circumstances, AO is directed to charge income-tax on the assessed income of Rs.1,66,00,401/- as per assessment order, hence ground no.2 is allowed.

8. Resultantly, the appeal filed by the assessee is hereby allowed.

**Order pronounced in open court on this 3<sup>rd</sup> day of March, 2021.**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 3<sup>rd</sup> day of March, 2021.  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-34, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**