

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
and
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.8325/Del./2019
(ASSESSMENT YEAR : 2014-15)**

DCIT, Central Circle 7, vs. Farm2Plate Dairy Products Pvt. Ltd.,
New Delhi. F – 2/7, Okhla Indl. Area, Phase-I,
New Delhi – 110 020.

(PAN : AACCV2013K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rajat Jain, CA

REVENUE BY : Ms. Yagya Saini Kakkar, CIT DR

Date of Hearing : 10.03.2022

Date of Order : 11.04.2022

ORDER

PER AMIT SHUKLA, JM :

Aforesaid appeal has been filed by the assessee against the impugned order dated 31.07.2019 passed by the Id. CIT(A)-44, New Delhi for the quantum of assessment passed under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2014-15.

2. At the outset, before us, ld. counsel for the assessee had submitted that here, in this case, addition was made on account of AMP expenditure where AO has made both substantive and protective adjustment on account of AMP adjustment. Protective adjustment was made on the basis of BLT method and substantive addition was made of Rs.3,47,78,337/- which was made on account of intensity approach. The assessee had gone for the “Vivad Se Vishwas Scheme, 2020” (VSVS) on account of substantive addition. The ld. CIT(A) has mainly directed the Assessing Officer not to include marketing or selling expenses from such adjustments and also held that protective adjustment is not enforceable.

3. Before us, ld. CIT DR firstly had objected that it is a transfer pricing issue and as such the matter may be moved to Transfer Pricing Bench. First of all, we find that it is not a case where any argument on behalf of the TP issue is required by the ld. CIT DR, albeit the issue here is whether the impugned appeal is covered by VSVS or not.

4. It is an undisputed fact that AO has made both substantive and protective addition wherein substantive addition was made of Rs.3,47,78,337/- by using Intensity Method and protective addition was made for Rs.24,73,81,255/- by using BLT method. Now, once the matter has been settled in VSVS on substantive addition then any

addition made on protective addition cannot be sustained. This has been clarified by the **CBDT vide Circular No.IT/A/1/2020-TPL dated 04.03.2022 vide Question No.35** wherein CBDT has clarified that substantive addition is covered under VSVS then on settlement of dispute related to substantive addition AO shall pass rectification order deleting the protective addition relating to the same issue in the case of assessee. Thus, the present appeal of the Department is not maintainable in view of the issue being settled under VSVS and required Form-5 has already been issued and filed before us. Accordingly, the appeal filed by the Revenue is dismissed.

Order was pronounced on 11th day of April, 2022.

**Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Dated: 11.04.2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-44, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.