

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'H' : NEW DELHI)

**BEFORE DR. B.R.R.KUMAR, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1036/Del/2019
(Assessment Year : 2012-13)

Jt. CIT, Spl. Range New Delhi	Vs.	M/s. Umang Dairies Ltd. 3 rd Floor, Gulab Bhawan, 6A Bahardur Shah Zafar Marg, New Delhi- PAN : AAACJ1322R
(APPELLANT)		(RESPONDENT)

Revenue by	Sh. Surender Pal, CIT(DR)
Assessee	Ms. Monika Aggarwal, CA

Date of hearing:	14.07.2022
Date of Pronouncement:	22.07.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Revenue against order dated 27.11.2018 in appeal no. 393/14-15 in assessment year 2012-13 passed by Commissioner of Income Tax (Appeals)-9, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 11/03/2015 u/s

143(3) of the Income Tax Act, 1961 passed by Ward- 27(1), New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. The assessee was engaged in the business of manufacturing and sales and contract manufacturing of Dairy products and had filed return of income of Rs. Nil. The case was selected for scrutiny and the assessee was asked to submit detailed submission on FAT & SNF under the provisions of Milk and Milk Products order (MMPO), 1992.

2.1 The Ld. AO was of opinion that the assessee has shown gain in terms of FAT & SNF of 115.49 MT & 116.13 MT respectively and there should ideally be no gain of FAT & SNF in the milk produced & product manufactured/sold. Also, the assessee has not submitted the copy of agreement between Mother Dairy & the assessee for the relevant year. The argument that Mother Dairy has allowed milk processing losses is not substantiated by documentary evidences. The allowability of losses in terms of SNF & FAT is thus not proved. Also, it is not clear how the allowability of losses is defined in the contract between the two parties. The assessee has failed to produce any verifiable document which reflects total SNF & FAT procured from Mother Dairy and the total quantum of FAT & SNF sent back to the Mother Dairy after processing and packing. Ideally the quantum of FAT & SNF received from the Mother Dairy should tally with the FAT & SNF sent back in the contract processing work under taken by the assessee.

2.2 The assessee has primarily claimed that they process and pack in poly pouches large quantities of milk for Mother Dairy for which the mother dairy allow us a processing loss of 1% Fat and 1% SNF but due to working efficiencies, the assessee is able to restrict the loss to 0.5% resulting into

gain of 0.5% on the quantities delivered back to Mother Dairy and accordingly this is converted into milk products.

3. The Ld. AO however did not accept the plea and made addition by following observations :-

“3.9 Considering the facts of the case and discussion made with the AR, I have no alternative but to treat the unexplained gains of FAT & SNF in the trading account as arising from the unexplained/unaccounted purchases made by the assessee. From the half yearly return as on 31.03.2012 submitted as per MMPO, the rates per kg of milk procurement in terms of FAT & SNF have been mentioned as under:

<i>Source of Procurement</i>	<i>Price Rs/Kg of milk</i>	<i>Price Rs/kg of Fat</i>	<i>Price Rs/kg Of SNF</i>
<i>VLC&MCC</i>	<i>26.52</i>	<i>212.20</i>	<i>141.46</i>
<i>Other Agencies</i>	<i>27.39</i>	<i>252.88</i>	<i>128.92</i>

Thus, the value of excess/gain of FAT & SNF in the trading account on the basis of purchase price mentioned above is determined as under:

FAT : 115490 x 252.88 = Rs.2,92,05,111/-

SNF : 164130 x 128.92 = Rs.2,11,59,640/

Total value unexplained purchases related to gain of FAT & SNF = Rs.5,03,64,751/-. This amount is added to the total income of the assessee.

Since, the assessee has filed inaccurate particulars of income and has concealed particulars of income, the penalty proceedings u/s 271(l)(c) of LT. Act, 1961 is initiated separately.

[Addition: Rs.5,03,64,751/-]”

4. In appeal the Ld. CIT(A) deleted the addition. The Revenue is in appeal raising following grounds;

- “1. Whether on the facts and circumstances of the case, the Id. CIT (A) has erred in deleting the addition of Rs. 5,03,64,751/- made by the AO as un-explained purchases relating to the gain of 115.49MT and 164.13 MT of FAT & SNF respectively in the Trading account for the assessee.*
- 2. Whether on the facts and circumstances of the case, the Ld. CIT (A) has erred in admitting the additional evidences and relying on such evidences which included a certificate from Mother Dairy Fruit & Vegetable Pvt. Ltd. for collecting the figure of quantity of milk procured for contract manufacturing.*
- 3. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing unabsorbed depreciation of Rs. 13,67,96,626/- upto A.Y 2001-02, to be set off against the income of A.Y 2012-13 relying upon the decision of jurisdictional High Court in the case of Pr. CIT-2 vs. British Motor Car Co. Ltd. in ITA No. 1031/2017 dated 09/01/2018, whereas the said decision has not been accepted in principle by the department.*
- 4. The appellant craves, leave or reserving the right to amend modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

5. Heard and perused the record. Ld. Sr. DR submitted that Ld CIT(A) has fallen in error in deleting the unexplained purchases discovered by Ld. AO by extensive discussion of matter. Ld. AR however, relied the findings of Ld CIT(A), submitting that the evidence has been appreciated in correct prespective.

6. At the outset it is pertinent to mention that admittedly assessee has earned FAT & SNF gain which has already been offered for tax. Ld. AO has found a case of unexplained purchase. In this context Ld. CIT(A) has rightly observed and reasoned that then disallowance can be made by Ld. AO only in a case where claim for deduction for the purchases is also made.

In the present case, no deduction qua purchase has been claimed so the Ld. AO erred in making addition for the so called alleged unexplained purchases. The question thus involved was not if there were unexplained purchases but not verifiable gains then the resultant action was to exclude such gains amount from taxing as an income.

7. Now primarily the Ld. CIT(A) has considered the agreement and remand report to conclude that the nature of business module was such that the gains were attributable to the contract work for Mother dairy. It can be observed that Ld. AO has proceeded on his own belief of the matter and assuming that **ideally** the quantum of FAT & SNF received from the Mother Dairy should tally with the FAT & SNF sent back in the contract processing work under taken by the assessee. Ld. CIT(A) relied Annexure: A-6 of Written submission, which the assessee company had submitted that w.e.f 01.04.2014, Mother Dairies Foods & vegetable Pvt Ltd has reduced the processing loss from 1% to 0.8%. It was also evident from correspondence exchanged by it and thus, Ld. CIT(A) has rightly held these facts are not theoretical.

8. Factually the Ld. AO concluded that MMPO returns submitted by the assessee do not include the contract/job work done by the assessee for Mother Dairy. Also, the trading account for the year does not includes stocks related to contract manufacturing. Ld. AO noted that the total quantities of opening stocks and procurement of milk during the year is reflected by the assessee as 36707.30 M.T. where as the milk procurement for contract manufacturing is only 1594.33 M.T. which is very about 4.34% of the total milk shown in the trading account. Thus, Ld AO doubted that the entire gain is owing to contract manufacturing.

9. However, what is established before Ld. CIT(A) is that the gain on account of reduction in process loss due to modern facilities is used for manufacturing of Ghee/Butter/SMP/DW/Other products, which is part & parcel of closing stock factored in trading account (part of MMPOreport)/audited annual accounts. Therefore, the same is attributable to the contract work for Mother Dairies Ltd.

10. The assessee company established before the Ld. CIT(A) that there was typographical mistake in reporting of quantification of milk procured for contract manufacturing which was actually 159433 M.T (1594.33 lacs litres) instead of 1594.33 M.T as mentioned in audited reports. To substantiate the correct figure, a certificate given by the Mother Dairy Fruit and Vegetable Private Limited was submitted during the appellate proceedings which was also re-verified by Ld. CIT(A). This was bolstered by Ld. CIT by findings ; *“The audited annual accounts of the appellant company reveals that it has earned conversion/job charges of Rs. 16.83 Cr in the year under consideration and if per ltr conversion charges is calculated considering the figure of 1594.33 M.T milk processed as per AO allegation then it comes to Rs. 105.56 per Ltr whereas on certified figure, it comes to Rs. 1.06 per Ltr..”*

11. The Bench is of considered opinion that assessment order under the Act has to be passed on cogent evidence and sound reasoning which is on the basis of verifiable events. The reasons may be subjective, however the reasons inducing the said belief must always be objective. The objective reasons should lead to the formation of the subjective belief that, income is liable for assessment. In the case in hand the Ld. AO has relied his belief that ideally the quantum of FAT / SNF received from Mother Dairy should

tally with the FAT & SNF sent back on completion of processing work. However, he failed to appreciate that every business activity has some inherent peculiarities which bring some incidental profits to the businessman than may actually appear to a prudent mind. When raised before Revenue, same need to be appreciated without much emphasis on evidence of every thing being incorporated in agreements. In present case, even the assumptions on which, the Ld. AO proceeded, in absence of evidence, have been factually corrected by Ld. CIT(A) on basis of additional evidence and no interference in the same is called for. The grounds no 1 and 2 raised by the revenue have no substance. The same are determined against the Revenue.

12. As with regard to substantive ground no 3 Ld Sr DR was unable to cite any proposition of law then relied by Ld CIT(A), in its impugned order, to distinguish. So the same is also decided against the Revenue.

13. **The appeal of Revenue is dismissed.**

Order pronounced in the open court on 22nd July, 2022.

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

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 22.07.2022

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI