

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Shri Anubhav Sharma, Judicial Member

ITA No. 770/Del/2020 : Asstt. Year : 2013-14

Than Singh, VPO, Kanina, Ward No. 3, Mahendragarh, Haryana -123027	Vs.	Income Tax Officer, Ward-2, Haryana-123001
(APPELLANT)		(RESPONDENT)
PAN NO. BVAPS6559J		

Assessee by : Shri Naveen Gupta, CA

Revenue by : Shri M. Barnwal, Sr. DR

Date of Hearing: 20.07.2022	Date of Pronouncement: 05.08.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

This appeal has been filed by the Assessee against the order of the Id CIT(A), Rohtak dated 03.02.2017 for the Assessment Year 2013-14.

2. The Assessee has raised the following grounds of appeal:

1. *That the order of the Ld. CIT(A) is against law and facts.*
2. *That the Ld. CIT(A) erred in confirming the addition of Rs. 71,81,964/- made by the Ld. AO by applying 8% NP rate u/s 44AD on the gross receipts of the appellant.*
3. *That the Ld. CIT(A) erred in confirming the order of the Ld. AO in applying the provisions of Section 44AD on the appellant although the assessee doesn't fall within the preview of the Section 44AD.*
4. *That the Ld. CIT(A) erred in confirming the order of the Ld. AO although the Ld. AO wrongly refused to accept the books of accounts of the appellant.*

5. *Without conceding on merits, NP rate applied of 8% on the gross receipts of the appellant is on much higher side, since the assessee is doing business in milk which is perishable item and the NP rate applied should not be more than 1%."*

2. Facts as taken from the records:

Assessee was running a Milk Chilling Plant under a proprietorship firm namely M/s Than Singh Milk Chilling Plant at Village Kanina, Mohindergarh during the year under proceedings. Return declaring an income of Rs. 2,27,380/- was filed on 17.07.2013. The assessee has declared net profit of Rs. 3,03,166/- from gross sales of milk of worth Rs,9,35,64,115/-. During the assessment proceedings, the assessee failed to produce books of accounts, bills and vouchers etc. In absence of books of accounts and vouchers, the profit declared the assessee was not accepted by the AO on the following grounds:-

(1) The assessee has shown his gross receipts at Rs. 9,35,64,115/- against purchases of Rs. 9,08,29,490/- during the year under consideration but failed to justify the correctness of the sales and purchases.

(2) The assessee has not produced his books of accounts of the year under consideration for examination with his financial statements. Thus, the statement of the assessee was recorded on oath in pursuance of summon u/s 131 on 07.01.2016 where he has categorically denied of maintaining any books of accounts (statement reproduced above). It is pertinent to mention here that the statement was recorded in presence of Counsel of the assessee.

(3) In absence of books of accounts, the sales and purchases could not be verified as a result the financial statements cannot be relied upon.

(4) The assessee has not furnished any bills / voucher and justification of the expenses debited to Profit-Loss account.

(5) On the basis of details of debtors and creditors furnished by the assessee, summons was issued to these persons. One of them Sh. Mahender S/o Sh. Ram Swaroop deposed in his statement that he had advanced a cash loan to the assessee. As per Balance sheet of the assessee, he was a creditor but the person himself has stated that he had advanced a loan to the assessee that too in cash.

(6) The assessee provided the list of persons to whom salary was paid during the year. Two of them attended the office and their statement was recorded on oath. They were asked to identify the persons given in the list provided by assessee being their colleagues. Both of them were ignorant about the names of the persons given in list. In his statement, assessee also failed to give the name of persons employed during the year. In a small scale industry like this proprietors not only knows name of employees but also their addressees. In the instant case, even colleagues were unaware about the names given in list.

(7) Further, other creditors namely Sh. Suraj Bhan S/o Sh. Nand Lai and Sh. Sunil Modi S/o Sh. Ramotar have stated in their statement that they had supplied milk to the assessee and the payments were made through Self payee Cheque. They also stated that this practice is being followed with all the suppliers. This establishes the fact that assessee has made payments to the suppliers exceeding Rs.20,000/- otherwise than by a account payee cheque or draft. This aspect was also accepted by the assessee in his statement recorded on 07.01.2016 (reproduced above). In spite of the facts that all these suppliers accepted in their statement that they had bank accounts. Furthermore the suppliers are not farmers but doing the business of supply of milk and supplied huge quantity of milk to the assessee since long.

(8) The information was also called for U/s 133(6) of the Act from the PNB Bank where assessee was maintaining his account to verify the facts narrated by suppliers. The bank supplied copy of account and instruments issued by the assessee for making payments to

suppliers. A perusal of the information received from bank reveals that all the payments were made through self payee cheque and all of them exceeds Rs. 20,000/-. In this way assessee contravenes the provisions of section 40A(3) of Income Tax Act.

Keeping in view the above facts and circumstances, in absence of books of accounts, vouchers and bills etc. the profit statement submitted by the assessee are not reliable and hence not acceptable. Thus, provisions of section 44AD are applied on the gross receipts of the assessee and the income is computed.”

3. The Id. CIT(A) confirmed the action of the Assessing Officer.

4. Aggrieved, the assessee filed appeal before the Tribunal.

5. The Id. Counsel argued that the provisions of Section 44AD of the Income Tax Act, 1961 are not attracted in the case of the assessee hence, the determination of profit @8% has been wrongly resorted to by the revenue authorities. It was argued that while applying the Net Profit rate in the present case, the revenue authorities purely acted on their guess work which is against the legal proposition and that too without considering the past history of the assessee business.

6. The Id. DR argued that the assessee has failed to maintain books of accounts and also failed to produce any bills & vouchers before the Assessing authorities and hence, the only way is to estimate the profit earned by the assessee on the trading of Rs. 9.35 crores worth of milk. The profit rate of 8% of the turnover has been determined

by taking a cue from the provisions of 44AD which enunciates the reasonableness of presumptive taxation.

7. Heard the arguments of both the parties and perused the material available on record. From the records, we find that the assessee has been maintaining bank account with regard to affairs of his business. All the instruments issued by the assessee for making payment to suppliers were through self cheques exceeding Rs. 20,000/-. The assessee could not substantiate the profit earned by providing the details of purchase and sale of milk during the year. Under these circumstances, only the resort available to the revenue is to determine the taxable income on a realistic estimation of the profits taking into consideration the entire facts of the case. We have gone through the profit margins of the dairy companies as per the CRISIL which determines the profit @ 3% to 5%. Similarly, the report of NABARD determines the profit @ 4% to 6% of the turnover. The other expenses involved are power & fuel, packaging material, chemical & detergent, repairs & maintenance, commission to agents and depreciation. The assessee is in the business of running a milk chilling plant with a turnover of Rs.9.35 Cr. Taking the average price of milk @ 60 per ltr., taking into consideration, the losses in processing and transportation, the assessee has dealt in sale of approximately 15.58 lac ltrs. of milk. On going through the entire financial aspects of the milk chilling plant, an amount of Rs. 1.25 per ltr. can be reasonably considered as the Net Profit for the instant Assessment Year. The assessee would get benefit of the profit already declared of Rs.3,03,166/- in the return of income. The AO to compute accordingly.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order Pronounced in the Open Court on 05/08/2022.

Sd/-

(Anubhav Sharma)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 05/08/2022

Ajay Kumar Keot, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR