

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 4710/मुं/2019 (नि.व 2015-16)
ITA NO.4710/MUM/2019(A.Y. 2015-16)

Gaiya Dairy Foods Pvt.Ltd.

C/o. Veeta Legal Services, 7 Raheja Centre,
Ground Floor, Free Press Journal Road,
Nariman Point, Mumbai – 400 021.

PAN: AAFCG-1353-G

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer , Ward -3(1)(4),
Room No.666, Aaykar Bhavan,M.K.Road,
Mumbai 400 020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Dharan Gandhi

प्रतिवादी द्वारा/Respondent by : Ms. Beena Santosh

सुनवाई की तिथि/ Date of hearing : 04/08/2022

घोषणा की तिथि/ Date of pronouncement : 04/08/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-8, Mumbai, [in short 'the CIT(A)]dated 10/04/2019 for the Assessment Year 2015-16.

2. Shri Dharan Gandhi appearing on behalf of the assessee submitted that the assessee is engaged in dairy business. The assessee had set up dairy farm at Vellore. The assessee filed return of income declaring turnover of Rs.22,08,17,903/- whereas, in Tax Audit Report the turnover of the assessee

was reported as Rs.22,28,17,903/-. The assessee was asked to explain the difference. The assessee submitted before the Assessing Officer that the assessee had received Franchise Fee/ advance of Rs.20.00 lacs for setting up of dairy from M/s. Mudra Holdings Pvt. Ltd., which was subsequently repaid through RTGS transaction. The Assessing Officer did not accept the explanation furnished by the assessee although the assessee had placed on record various documents to substantiate its plea. The assessee had written to Mudra Holdings Pvt. Ltd. to confirm the transaction. However, the said party despite repeated request of the assessee failed to furnish confirmation. Consequently, the Assessing Officer made addition of the aforesaid amount. Against the assessment order dated 29/12/2017 the assessee filed appeal before the CIT(A). The CIT(A) upheld the findings of Assessing Officer and dismissed the appeal of assessee. After order by First Appellate Authority, the assessee again persuaded Mudra Holdings Pvt. Ltd. to file confirmation. The assessee has now received confirmation letter from Mudra Holdings Pvt. Ltd. clarifying that the amount of Rs.20.00 lacs was advanced to the assessee. The letter dated 21/06/2022 from Mudra Holdings Pvt. Ltd. is now placed on record as additional evidence. The Id. Authorized Representative for the assessee submitted that assessee is also placing on record Balance Sheet as on 31/03/2016 to substantiate that the amount was repaid in the subsequent Assessment Year. The Id. Authorized Representative for the assessee submitted that letter from Mudra Holdings Pvt. Ltd. could not be placed on record before the Authorities Below as the confirmation from the company was received only after passing of the order by CIT(A). The Id. Authorized Representative for the assessee prayed for admitting additional evidences and decide appeal in the light of additional documents field by the assessee.

3. Per contra, Ms. Beena Santosh representing the Department opposed furnishing of additional evidence by the assessee at a belated stage. The Id. Departmental Representative submitted that if additional evidences are to be accepted, the same should be sent to the Assessing Officer for verification.

4. Both sides heard. The solitary issue in the present appeal is with regard to addition of Rs.20.00 lakhs, purportedly received by assessee from Mudra Holdings Pvt. Ltd. The said amount was ostensibly repaid by the assessee in Financial Year 2016-17, i.e. relevant to the Assessment Year 2017-18. Since the assessee had failed to furnish any confirmation from the lender the Assessing Officer made addition of the aforesaid amount treating it as part of total turnover as declared in tax Audit Report. The assessee has now placed on record confirmations from the lender as additional evidence. The reason for not placing the letter on record before the Assessing Officer / CIT(A) was that the lender had furnished confirmation only after passing of the order by CIT(A). The assessee in order to substantiate that the said amount has been repaid in subsequent assessment year has also placed on record annual report for the Financial Year 2016-17. Taking into consideration entirety of facts, the additional evidence(supra) filed by the assessee are admitted. The appeal is restored back to the file of Assessing Officer for examination of additional evidence. The Assessing Officer shall frame denovo assessment after considering fresh documents filed by the assessee, in accordance with law.

5. The impugned order is set aside and appeal by assessee is allowed for statistical purposes in the terms aforesaid.

Order pronounced in the open Court on Thursday the 4th day of August, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 04/08/2022

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai