

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'E', NEW DELHI**

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

Sh. Yogesh Kumar US, Judicial Member

ITA No. 916/Del/2022 : Asstt. Year: 2017-18

Mohd Javed, 736, Gali Fazal Pura, Daryaganj, Sui Walan, Delhi-110062 (APPELLANT)	Vs.	Income Tax Officer, Ward-48(5), Delhi (RESPONDENT)
PAN No. AGPPJ7753C		

Assessee by : Sh. J. S. Kohli, CA

Revenue by : Sh. Ajay Kumar Arora, Sr. DR

Date of Hearing: 08.12.2022

Date of Pronouncement: 03.03.2023
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ORDER

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

The present appeal has been filed by the assessee against the order of the Id CIT(A)-3, National Faceless Appeal Centre (NFAC), Delhi dated 29.03.2022.

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

"1. The appellate order framed is not justified in the eyes of law.

2. The learned CIT (Appeal) failed to appreciate the facts placed on the record during the course of appellate proceedings that the cash/receipts deposited in regular bank account were not a sale in the hands of appellant, it were related to the principal concern as by virtue of an agreement the appellant was to be remunerated with nominal fixed commission.

3. That the penalty appealable was deserved to kept in abeyance where the request was made that in quantum's appeal is mainly on the same issue that the appellant was only a mediator in respect of receipt appearing in Bank account. Further the principal concern had also confirmed such facts.

4. In the circumstances and fact of the case the appellant was not liable U/s 44AB so the learned CIT (Appeal) was not justified in confirming the penalty U/s 271B."

3. Suffice to say that owing to the cash deposits of Rs.4.3 Cr. in the bank account and the sales turnover of Rs.4.01 lacs in the ITR the revenue levied penalty u/s 271B considering the deposits of Rs.4.3 Cr. as turnover of the assessee.

4. Having gone through the entire material on record, we find that the assessee is a commission agent of Gujarat Milk Cooperative Federation having milk booth at Darya Ganj, Delhi and earning a commission margin @ 0.55% to 12.16% per unit on butter milk to paneer. The same are as under:

INDICATIVE PER LTR MARGIN OF MOHD JAVED F.Y 2016-17

Material Description	MRP Rate	Qty(Ltr)	Total-Sale of GCMF	Per Ltr Margin	Indicative per Ltr Margin of Mohd Javed
AMUL BUTTERMILK 24X500 ML POUCH	10	30528	560799.52	0.55	16790.4
AMUL BUTTERMILK 24X500 ML POUCH	11	9372	189320.38	0.55	5154.6
AMUL SPICED BUTTERMILK 30X400 ML POUCH	10	19584	424972.70	0.55	10771.2
AMUL MASTI DAHI 5 KG MATKA	295	25	1350.00	1.06	26.5
AMUL MASTI DAHI POUCH 24X400 GM CRATE	25	220.8	12095.70	2.25	496.8
AMUL MASTI DAHI POUCH 24X400 GM CRATE	28	28.8	1792.80	2.52	72.576
AMUL MASTI DAHI POUCH 50X200 GM CRATE	11	20	965.03	2.28	45.6
AMUL MASTI DAHI POUCH 50X200 GM CRATE	13	2940	167651.74	2.28	6703.2
AMUL MASTI DAHI POUCH 50X200 GM CRATE	15	1280	85735.87	2.63	3366.4
AMUL MASTI DAHI POUCH 10X1 KG CRATE	50	2520	120204.00	0.80	2016
AMUL MASTI DAHI POUCH 10X1 KG CRATE	55	2050	107221.81	0.95	1947.5
AMUL MASTI DAHI CUP 24*200 GM CRATE	20	187.2	15818.40	5.00	936
AMUL MASTI DAHI CUP 24*200 GM CRATE	22	201.6	19051.20	5.00	1008
AMUL PREMIUM DAHI CUP 12*400 GM CRATE	50	67.2	5501.72	6.88	462.336
AMUL COW MILK 24X500 ML POUCH	21	3933	154605.82	0.80	3146.4
AMUL COW MILK 30X400 ML POUCH (4%)	20	1200	56219.98	0.76	912
AMUL COW MILK 24X500 ML POUCH (4%)	21	1164	45861.31	0.80	931.2
AMUL SLIM-N-TRIM 24X500 ML POUCH	17	1896	60994.32	0.67	1270.32
AMUL SLIM-N-TRIM 24X500 ML POUCH	18	3912	133399.21	0.67	2621.04
AMUL SLIM-N-TRIM 24X500 ML POUCH	19	276	9941.52	0.71	195.96
AMUL GOLD 24X500 ML POUCH	24	58080	2678651.32	0.67	38913.6
AMUL GOLD 24X500 ML POUCH	25	281940	13547213.64	0.70	197358
AMUL GOLD 24X500 ML POUCH	26	22320	1115329.85	0.73	16293.6
AMUL GOLD 12X1 L POUCH	48	36564	1686332.85	0.67	24497.88
AMUL GOLD 12X1 L POUCH	49	199980	9409057.92	0.70	139986
AMUL GOLD 12X1 L POUCH	51	19140	937285.40	0.73	13972.2
AMUL GOLD 60X200 ML POUCH	10	12	574.20	1.00	12
AMUL GOLD 2X6 L POUCH	252	4044	163458.64	0.58	2345.52
AMUL GOLD 2X6 L POUCH	264	13152	556965.54	0.60	7891.2
AMUL GOLD 2X6 L POUCH	276	6576	291448.38	0.63	4142.88
AMUL GOLD 2X6 L POUCH	288	408	18886.33	0.66	269.28
AMUL GOLD 2X6 L POUCH	300	228	11003.28	0.71	161.88
AMUL FRESH PANEER BLOCK 45X200 GM CARTON	60	99	23760.00	11.40	1128.6
AMUL FRESH PANEER BLOCK 45X200 GM CARTON	64	63	16058.00	12.16	766.08
AMUL DIAMOND 24*500 ML POUCH	25	10488	497341.25	0.96	10068.48
AMUL DIAMOND 24*500 ML POUCH	26	33696	1662897.65	1.00	33696
AMUL DIAMOND 24*500 ML POUCH	28	2736	142873.84	1.05	2872.8
AMUL DIAMOND 12*1 LTR POUCH	50	12300	583266.37	0.96	11808
AMUL DIAMOND 12*1 LTR POUCH	51	39300	1900155.00	1.00	39300
AMUL DIAMOND 12*1 LTR POUCH	54	3252	166567.39	1.05	3414.6
AMUL TAAZA 24X500 ML POUCH	19	26580	960601.86	0.66	17542.8
AMUL TAAZA 24X500 ML POUCH	20	113016	4302518.36	0.69	77981.04
AMUL TAAZA 24X500 ML POUCH	21	8052	321999.29	0.72	5797.44
AMUL TAAZA 12X1 L POUCH	38	3720	134440.92	0.66	2455.2
AMUL TAAZA 12X1 L POUCH	39	24012	890124.75	0.69	16568.28
AMUL TAAZA 12X1 L POUCH	41	2040	79539.54	0.72	1468.8
AMUL TAAZA 2X6 L POUCH	192	12	365.40	0.49	5.88
		1003216	44272220		729592

5. Since, the assessee only a commission agent and earns margin as prescribed in Gujarat Milk Cooperative Federation rules as reflected in column 5 above, we hold that the penalty levied u/s 271B obliterated.

6. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 03/03/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

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

Dated: 03/03/2023

Subodh Kumar/AK, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR