

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH "SMC" KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

ITA No. 496/KOL/2023
Assessment Year: 2017-18

Somnath Das Village: Makardah, Post: Makardah, PS: Domjur, Howrah-711409. PAN: ARDPD 8923 B (Appellant)	Vs.	ITO, Ward-46(1), Kolkata (Respondent)
--	-----	---

Present for:

Appellant by : Shri Shyam Sundar Jha, AR
Respondent by : Shri S. Datta, CIT, DR

Date of Hearing : 05.07.2023
Date of Pronouncement : 11.07.2023

ORDER

PER SONJOY SARMA, JM:

This appeal by the assessee for the Assessment Year 2017-18 is directed against the order dated 20.03.2023 passed by the Id. CIT(A), NFAC, Delhi. The assessee has raised following grounds of appeal:

"1. The Ld. Assessing Office erred in facts of the case by estimating the profit @8% on sale proceeds whereas the margin on the price of the packed milk is not more than 2.01%

2. The Assessing officer wrongly considered the rate of profit on estimation basis whereas the data related to payment to the principal after realisation of the sale proceeds on retail price are available.

3. The Learned Assessing officer ignored the actual spirit of business of the assessee as per agreement entered by the assessee with M/s-Gujarat Cooperative Milk Marketing Federation Ltd. The Ld. Assessing officer ignored the fact of the case that margin of 2.01% is on the price of the packed milk is only belonging to the assessee.

4. The Learned Assessing officer ignored the actual spirit of business that the assessee is very small businessman of selling product of

M/s- Gujarat Cooperative Milk Marketing Federation Ltd and getting a difference of margin between price of the product and retail price.

5. The Learned Assessing officer completed the assessment u/s 144 on the arbitrary basis and ignored the actual fact of the business whereas the turnover of the assessee is only to the extent of margin which is belonging to him.

6. The Learned Assessing Officer wrongly mentioned that tax audit is applicable on such small business man who is only getting margin on sale of the product of M/s. Gujarat Cooperative Milk Marketing Federation Ltd

7. The CIT(A) appeal issued the order U/s 250 on arbitrary basis and without giving proper opportunity to the assessee

8. The CIT(A) is wrong and very hurry to pass the order on the date of adjournment on 20th March,2023 which indicates that the CIT(A) did not render proper justice in such cases.

9. The CIT(A) erred in law and passed the order without considering the actual spirit of business of the assessee.”

2. At the outset, ld. counsel for the assessee submitted that the impugned order of the ld. CIT(A) is an ex-parte order and nothing has been dealt on merits except reiterating the assessment order on the disallowance of addition made by the ld AO. The assessee could not get any opportunity to file its submission and other relevant details before the authorities below. On perusal of the order of ld. CIT(A), we find that opportunities were indeed given to the assessee for representation which was not complied by the assessee. The ld. AR before us prayed for one more opportunity may be allowed to the assessee to represent his case before the ld. CIT(A). He further assured that he will not take any adjournment before the ld. CIT(A).

3. We after perusal of the record that since the impugned order is an ex-parte order which has been passed by the ld. CIT(A) and

this is a fit case for remanding the appeal before the ld. CIT(A) to give more effective opportunity to the assessee and we direct the assessee to co-operate with the ld. CIT(A) for expeditious disposal of the matter and not seeking any adjournment except due to the exceptional and unavoidable circumstances.

4. In view of the above discussion, various grounds raised by the assessee on merits are left open and remand back to the file of ld. CIT(A) for de-novo adjudication.

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

Order pronounced in the open court on 11.07.2023

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated:11.07.2023
Biswajit

Copy to:

1. The Appellant: Somnath Das.
2. The Respondent: ITO, Ward-46(1), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata