

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member
AND
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 2374/Del/2019
(Assessment Year: 2013-14)

ACIT, Special Range, Delhi (Appellant)	Vs.	Umang Dairies Ltd, 3 rd Floor, Gulab Bhawan, 6-A, Bahadur Shah Zafar Marg, New Delhi (Respondent)
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PAN: AAACJ1322R

Assessee by :	Ms. Monika Agarwal, Adv
Revenue by:	Shri Anuj Garg, Sr. DR

Date of Hearing	05/07/2023
Date of pronouncement	25/07/2023

ORDER

PER C. M. GARG, J. M.:

1. This appeal has been filed by the Revenue against the order of the Id CIT(A)-9, New Delhi dated 28.12.2018 for AY 2013-14.

2. The revenue has raised the following grounds of appeal:-

"Whether on the facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs. 5,02,44,904/- made by the AO as un-explained purchases relating to the gain of 116.70MT and 170.58 MT of FAT & SNF respectively in the Trading account for the assessee."

3. The Id Sr. DR supporting the assessment order submitted that the Id CIT(A) has erred in erred in deleting the addition of Rs. 5,02,44,904/- made by the AO as un-explained purchases relating to the gain of 116.70MT and 170.58 MT of FAT & SNF respectively in the Trading account for the assessee.

4. The Id Sr. DR took us through para 3.6 to 3.9 of assessment order and submitted that the AO after considering the explanation of assessee

rightly held that the gain shows in the trading account was not accepted as the assessee has shown gains in terms of FAT & SNF of said quantity and thus there should be ideally be no gain of FAT & SNF in the milk produced and product manufactured/ sold. The Id Sr. DR submitted that the assessee has not submitted the copy of agreement between Mother Dairy and the assessee for the relevant year. Therefore, the argument that Mother Dairy has allowed milk processing losses is not substantiated by documentary evidences and the allowability of losses in terms of SNF and FAT is thus not proved. The Id Sr. DR vehemently pointed out that considering the facts and circumstances the AO had no alternative but to treat the unexplained gains of FAT and SNF in the trading account as arising from the unexplained/ unaccounted purchases made by the assessee. Therefore, the AO was right in making addition in the hands of the assessee considering the total value of unexplained purchase related to gains of FAT and SNF which was deleted by the Id CIT(A) without any basis and justified reason therefore, impugned first appellate order may kindly be set aside by restoring with the AO.

5. Replying to the above, the Id counsel of the assessee submitted copies of the two orders of coordinate bench in assessee's own case wherein, appeals filed by the revenue for AY 2011-12 and 2012-13 have been dismissed by the Tribunal under identical facts and circumstances on identical issues. On being asked by the bench the Id Sr. DR did not controvert the factual position that the revenue's appeal for said two assessment year on identical issue has been dismissed by the coordinate bench of the Tribunal upholding the findings recorded by the Id CIT(A) in favour of the assessee as under:-

"3. The Ld. Counsel for the assessee submitted that the above appeal is squarely covered by the Co-ordinate Bench for the Assessment Year 2012-13 in Assessee's own case in ITA No. 1036/Del/2019. The Ld. DR has not disputed the above submission made by the assessee.

4. We have heard the parties and perused the material available on record and gave our thoughtful consideration. It is found that the similar

additions have been made by the A.O. which has been ultimately challenged in ITA No. 1036/Del/2019 in Assessee's own case for Assessment Year 2012-13 wherein the Coordinate Bench of the Tribunal has allowed the appeal the appeal of the assessee wherein it is held as under:-

" 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 perspective.

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 MMPO report)/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."

6. In view of the above, as the representatives of both sides have agreed that the facts and circumstances of the issue raised by the revenue in the present appeal was also agitated by the revenue before

the Tribunal for AY 2011-12 and 2012-13 and facts and circumstances of the present Assessment Year 2013-14 are quite identical and similar to the said two preceding years. Since there is no change in the facts and circumstances and issue of the present year and Id Sr. DR has also not pointed out any dissimilarity of facts on the issue in present AY 2013-14, therefore, we have no alternative but to follow orders of the coordinate bench of the Tribunal for AY 2011-12 (supra) in assessee's own case wherein, the Tribunal dismissed the appeals of the revenue upholding the first appellate order wherein, the Id CIT(A) deleted the identical addition made by the AO. Therefore, sole ground of revenue in this appeal deserves to be dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 25/07/2023.

-Sd/-
(B. R. R. Kumar)
ACCOUNTANT MEMBER

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 25/07/2023

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi