

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "SMC", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,

ITA NO. 3162/Del/2023	
A.Y.R. : 2017-18	
SH. SANJAY SHARMA, C-65, 3 RD FLOOR, JANGPURA EXTENSION, DELHI - 110 014 (PAN: AUNPS3135K)	VS. INCOME TAX OFFICER, WARD 54(3), CIVIC CENTRE, MINTO ROAD, NEW DELHI - 2
(APPELLANT)	(RESPONDENT)

Appellant by : Shri Vaibhav Ahuja, CA

Respondent by : Shri Om Parkash, Sr. DR.

Date of hearing : 03.04.2024

Date of pronouncement : 05.04.2024

ORDER

PER SHAMIM YAHYA, AM :

This appeal filed by the assessee for the assessment year 2017-18 is directed against the Order of Ld. CIT(A), NFAC, New Delhi dated 12.09.2023. The assessee has raised the following concise Grounds of Appeal:-

1. *That on the facts and circumstances of the case in law, the Ld. CIT(A) has erred in affirming the order of the AO of assessing the total income of the appellant under section 143(3) of the Act for the subject assessment year at INR 47,02,276/- as against the returned income of Rs. 9,22,420/-.*
2. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in :*
 - 2.1 *Not appreciating the legal agreement entered between the appellant and Mother Dairy Fruit and Vegetable Private Limited outlining the roles, responsibilities, and obligations of respective parties.*
 - 2.2 *Not appreciating that the appellant has been appointed only for the limited purpose of transportation of milk and not as an agent / distributor for supplying milk.*

- 2.3 *Not appreciating the fact that in subsequent assessment year the case of the appellant was selected for limited scrutiny for the same reason of 'Cash Deposit' and no addition has been made by the AO.*
3. *That on the facts and circumstances of the case and in law, the AO has erred in levying / charging interest under sections 234B and 234C of the Act.*
4. *That, on the facts and circumstances of the case, the AO has erred in initiating penalty proceedings under section 270A(9) of the Act mechanically and without recording any adequate satisfaction for such initiation.*

Each of the above grounds are independent and without prejudice to the other grounds of appeal preferred by the Appellant.

2. Briefly stated facts are that the assessee is an individual and during the assessment year under consideration he was engaged in the business of transportation, and owned and operated milk tankers for distribution of bulk vending milk of Mother Dairy Fruit & Vegetable Private Limited from processing units to various Mother Dairy Booths. The assessee filed his return of income on 4.11.2017 declaring total income of Rs. 9,22,420/- and the same was processed accordingly. Later on, the case of the assessee was selected for limited scrutiny vide notice dated 9.8.2018 issued u/s. 143(2) of the Act for examination of cash deposit during the year. In response to notice, the AR of the assessee furnished part details/ information called from time to time electronically on E-processing facility and the same were examined and placed on record. AO noted that during the year under consideration total milk of 5559273 litres was sold by Mother Dairy, which is apparent from the replies filed by the assessee as well as information received from Mother Dairy. He further noted that the Ledger furnished by Mother Dairy containing details of invoices and payment received from Shri Sanjay Sharma for FY 2016-17, shows

'Debit Milk Invoice Raised and Credit Payment Received Against'. In the said detail Invoices of Rs. 193831738/- were raised against the assessee and the same amount was recovered from the assessee from his bank account, which proves that invoices were raised in the name of the assessee for 5559273 litres of milk. However, no profit was declared by the assessee on selling of milk of 5559273 litres. Accordingly, AO noted that since the assessee has failed to declare profit on cash sale of milk of 5559273 litres. He further noted that as per Circular dated 11.5.2014 issued by Mother Dairy to its Distributors which is placed on record, the Distributors charged Margin Rate was 0.68 paise per litre which was increased in later years. Therefore, taking the Margin Rate of 0.68 paise per litre, the profit earned by the assessee during the relevant assessment year on cash sale of 5559273 litres of milk comes to Rs. 37,80,306/-. Hence, addition of Rs. 37,80,306/- was added to the income of the assessee by assessing the total income at Rs. 47,02,730/- u/s 143(3) vide assessment order dated 28.12.2019.

3. Aggrieved with the above, the assessee preferred appeal before Ld.CIT(A), who observed that the assessee has argued that no addition was warranted in the absence of any reason. However, the assessee has not been able to counter the issue of Distributors profit margin, which is over and above the transportation charges and is evidenced by statement of Mother Dairy itself that profit margin belongs to the Distributor, therefore, he upheld the addition made by the AO and dismissed the appeal of the assessee vide order dated 12.09.2023.

4. Now, the assessee is in appeal before me.

5. I have heard the rival contentions and perused the material available on record and also gone through the orders of the authorities below.

5.1 At the time of hearing, Ld. AR has submitted that as per information received from Mother Dairy, total invoice of Rs. 19,38,31,738/- was raised and payment received of the same amount by Mother Dairy on account of sale of 551849 litre of milk in the case of assessee during FY 2016-17 and AO asked how much profit was earned by the assessee from the sale of 5559273 litre of milk and how the profit of the same has been accounted for by the assessee in his books of accounts. In reply, the assessee submitted a certificate issued by Mother Dairy dated 17.12.2019 (Serial No. 7 of PB page 130), the contents thereof are reproduced as under:-

"We hereby confirm that M/s Sanjay Sharma, R/o C-60, Jangpura Extension, New Delhi - 110014 acted as transporter of Bulk Vending Machine (BVM) on our behalf in Delhi and NCR.

Further, we hereby confirm that we authorized him to collect cash and cheques from our retailers and books on our behalf and deposit the same in his account for further payment to us by account payee cheques/direct debit."

5.2 He further submitted that AO also issued a verification notice u/s. 133(6) of the Act on 20.11.2019 and an additional notice on 14.12.2019 to Mother Dairy and reply thereof has been submitted by the Mother Dairy by its mail on 3.12.2019 intimated the following :-

"The nature of transaction executed with Shri Sanjay Sharma is for sale of milk.

.....

The transactions executed with the assessee are exclusively on sale/purchase model only resulting in earning of profit margins by him. Accordingly the total responsibility and risk of the business rests with the assessee. Also we would like to inform you that our relationship with the assessee is on a principal to principal basis only so there is no payment of commission.

Further the Mother Dairy Fruit and Vegetable making the payment against invoice raised by Shri Sanjay Sharma is of transporter charges.....

....."

5.3 It was further submitted by the Ld. AR that in response to notice u/s. 133(6) of the Act, a reply was received from Mother Dairy through email on 17.12.2019 intimating the following:-

".....We hereby confirm that M/s Sanjay Sharma R/o C-60, Jangpura Extn., New Delhi – 110 014 has acted as a transporter of bulk vending milk (BVM) on our behalf in Delhi and NVT.

*Further we hereby confirm that we authorized him to collect cash and cheques from our retailers and booths on our behalf and deposit the same in his account for further payment to us by account payee cheques/ Direct Debit.
.....”*

5.4 Ld. AR further stated that AO by relying upon a Circular dated 11.05.2014 issued by Mother Dairy to its distributors, wherein the Distributors charged Margin Rate of 0.68 paisa per litre which was increased in later years made the addition in dispute and similarly, Ld. CIT(A) has simply assumed that there must be some profit margin on sales executed without going through the terms of contract between the Assessee and Mother Dairy. It was the further say that the legal agreement entered between the assessee and Mother Dairy Fruit and Vegetable Private Limited outlining the roles, responsibilities, and obligations of respective parties and it was not considered by the AO that assessee has been appointed only for the limited purpose of transportation of milk and not as an agent / distributor for supplying milk. To support the aforesaid contentions, he filed a Paper Book containing pages 1 to 183, wherein he has attached the assessment and appellate records including the copy of agreement dated 1.1.2016 entered between the assessee and Mother Dairy Furit and Vegetables Pvt. Ltd. and the Certificate dated 16.12.2019 issued by the Mother Dairy certifying that assessee is a mere transporter and other documents etc., for the perusal of the Bench. He further submitted that the agreement between the Assessee and Mother Dairy clearly mentions the nature and purpose of the agreement and stipulates that the agreement between the

Assessee and Mother Dairy is on a Principal to Principal basis and the only income of the assessee is hire charges and no other income accrues or arises or is received by the Assessee from Mother Dairy, which has not been considered and examined by both the lower authorities, and needs to be considered and examined by the Assessing Officer, after giving adequate opportunity of being heard to the assessee and decide the same afresh, as per law. It was the further contention of the assessee's AR that in subsequent year (AY 2018-19) the case of the assessee was selected for limited scrutiny proceedings for similar reason of cash deposit in SBI Account No. 31700038450 and assessment proceedings have been concluded by the AO without making any such addition, a copy of assessment order dated 5.1.2021 is attached at Serial No. 9 of the PB Page 134-135.

5.5 On the other hand, Ld. Sr. DR relied upon the orders of the authorities below.

6. Upon careful consideration of the relevant records, including the Paper Book as referred above and the orders of the authorities below, I am of the considered view that AO by relying upon a Circular dated 11.05.2014 issued by Mother Dairy to its distributors, wherein the Distributors charged Margin Rate of 0.68 paisa per litre which was increased in later years made the addition in dispute and similarly, Ld. CIT(A) has simply assumed that there must be some profit margin on sales executed without going through the terms of contract between the Assessee and Mother Dairy. It is undisputed fact that the legal agreement dated 1.1.2016 entered between the assessee and Mother Dairy

Fruit and Vegetable Private Limited outlining the roles, responsibilities, and obligations of respective parties was not properly considered and examined by the AO that assessee has been appointed only for the limited purpose of transportation of milk and not as an agent / distributor for supplying milk. It is also not in dispute that Mother Dairy vide its Certificate dated 16.12.2019 certified that assessee is a mere transporter. The agreement between the Assessee and Mother Dairy clearly mentions the nature and purpose of the agreement viz. the agreement between the Assessee and Mother Dairy is on a Principal to Principal basis and the only income of the assessee is hire charges and no other income accrues or arises or is received by the Assessee from Mother Dairy, which has not been considered and examined by both the lower authorities properly, and, therefore, in my considered opinion this aspect should be considered and examined at the level of the Assessing Officer by considering the agreement entered between the parties and after giving adequate opportunity of being heard to the assessee and only thereafter decide the issues in dispute afresh, as per law. Also in my conscious view the AO should consider the fact that in subsequent year (AY 2018-19) the case of the assessee was selected for limited scrutiny proceedings for similar reason of cash deposit in SBI Account No. 31700038450 and assessment proceedings have been concluded by the AO without making any such addition. In view of above, I set aside the issues in dispute to the file of the AO for deciding the same afresh, as per law, after considering all the relevant documents including the agreement entered between the parties. Needless to say that the assessee should be given adequate opportunity of being heard.

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

Order pronounced in the Open Court on 05th April, 2024.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar