

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2493/MUM/2023
(Assessment Year: 2013-14)**

Chheda Specialities Foods Pvt Ltd

Plot No 7, BMC Ind Estate,
Sai Nagar, MG Road No. 1,
Kandivali (West), Mumbai - 400067
[PAN: AACCC6221G]

..... **Appellant**

Income Tax Officer 12(1)-4, Mumbai,

Room No. 145A, Aayakar Bhavan,
M.K. Road, Churchgate,
Mumbai - 400020

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Rahul Hakani
For the Respondent/Department : Shri H M Bhatt

Date

Conclusion of hearing : 30.05.2024
Pronouncement of order : 26.08.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 16/05/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] for the Assessment Year 2013-14, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 30/03/2016, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').
2. The Assessee has raised following grounds of appeal:
 - 1) *"The learned CIT(A) erred in confirming the order of Assessing officer rejecting books of accounts without*

appreciating that books of accounts are duly audited and non-maintenance of the stock register cannot be a ground for rejecting books of accounts and further the Ld CIT(A) did not deal with various submissions of the Assessee regarding inconsistencies in invoices etc of third parties etc and Ld CIT(A) failed to appreciate said third parties were never summoned by the Assessing Officer and hence the rejection of books of accounts may be set-aside and consequent addition of Rs 96.08.043/- may be deleted.

- 2) *Without prejudice to above, the Ld CIT(A) erred in confirming addition of Rs 96,08,043/- being the difference between gross profit offered by Assessee and gross profit estimated by AO @ 22.5% on total turnover on the ground that Assessee has disclosed less gross profit on its manufacturing business of wafers etc without appreciating that Assessee was manufacturing wafers and trading in oil and in its manufacturing business Assessee had declared a gross profit of 27% which was more than 22.5% and hence the addition of Rs 96,08,043/- may be deleted.*
- 3) *Without prejudice to above, the Ld CIT(A) erred in confirming addition of Rs 96,08,043/- being the difference between gross profit offered by Assessee and gross profit estimated by AO @ 22.5% on total turnover without appreciating that gross profit cannot be estimated on trading of oil and such estimation gives unrealistic gross profit on trading of oil and estimate of gross profit of 22.5% on turnover of oil may be deleted.*
- 4) *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal."*

3. The relevant facts in brief are that Appellant filed return of income for the Assessment Year 2013-14 on 30/09/2013 declaring 'Nil' income after claiming set of brought forwarded losses of income INR 57,03,958/-.
4. The case of the Appellant was selected for regular scrutiny the Assessing Officer completed the Assessment under Section 143(3) of the Act, vide assessment order dated 30/03/2016 the Assessing total income of the Appellant at INR 80,79,450/-. The Assessing

Officer rejected books of account of the Appellant and computed gross profit at the rate of 22.5% of aggregate turnover of INR 25,81,89,761/- reflected in the books of accounts after granting the benefit of gross profit already declared by the Appellant amounting to INR 4,84,84,653/- the Assessing Officer made in addition of INR 96,08,043/-. (5,80,92,696 – 4,84,84,653).

5. Being aggrieved the Appellant preferred appeal before CIT(A). In the written submission, dated 06/01/2023, filed before the CIT(A) it was contending on behalf of the Appellant as under :-

"That appellant's business consisted of two parts i.e. manufacturing of Wafers/Snacks and also trading in edible oil. Two streams of revenue are totally different. To be fair to learned A.O., he has rightly stated that in food industry gross profit margin is between 20 to 25%. However, there is margin of only around 5% as far as business of edible oil is concerned. The learned A.O. has erroneously applied single rate of gross profit to entire turnover i.e. sale turnover of wafer/dry snacks and edible oil. The audited accounts of appellant contain details of break-up of turnover i.e. for wafer/snacks and edible oil separately and calculation of gross profit of both the businesses of appellant is attached for your honor's kind perusal.

From above, it is crystal clear that appellant has offered higher rate of Gross Profit of 27.19%. on wafer against Learned A.O.'s estimation of 22.5%. Even in edible oil, appellant's margin is higher at 5.69% than industry average of 3 to 5%.

Without prejudice to above Gross Profit offered by appellant was Rs.5,02,59,014/- and not Rs.4,84,84,653/- which is taken for calculating disallowance.

Your appellant further submits that reassessment proceedings for A.Y. 2010-11 & assessment proceedings for A.Y. 2013-14 were being conducted simultaneously. For both these years, Learned

A.O. rejected Book of Accounts. As mentioned in assessment order for A.Y. 2013-14, the Gross Profit rate of 22.5% is reasonable in food industry. For A.Y. 2010-11, Where assessee himself had declared gross profit in excess of 25%, he made adhoc disallowance of 20% of purchases of month of February 2010 & March 2010 and for A.Y. 2013-14 he did not segregate total turnover of assessee into turnover of wafer/dry snacks and turnover of edible oil and simply applied gross profit rate of 22.5% to entire turnover." (Emphasis Supplied)

However, the CIT(A) was not convinced and therefore, declined to grant any relief to the Appellant. Thus, the CIT(A) dismissed the appeal vide order dated 16/05/2023.

6. Being aggrieved the Appellant has now prefer the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
7. When the appeal was taken up for hearing, the Learned Authorized Representative for the Appellant reiterated the submissions made before the CIT(A). Taking us through the financial statements for the relevant previous year [*placed at page 1 to 61 of the paper-book*] and the computation of gross margins of wafer & snacks manufacturing business and edible oil trading business [*place at page 85 and 86 of paper-book*]. It was submitted that the Assessing Officer had failed to appreciate that Appellants business consisted of (a) manufacture of wafer & snacks and (b) trading in edible oil. While estimating gross profits the Assessing Officer had taken the gross profits applicable in the food industry which were relevant for the business of manufacturing wafer/snack and had incorrectly applied the same to the aggregate turnover of INR 25,81,89,761/- which were also included turnover of INR 9,27,19,200/- pertaining to business of

trading in edible oil. It was submitted that no addition was warranted in relation to the business of manufacturing of wafer/snack as the Appellant had declared gross profit margin of 27.19% which were more than the gross profit margin of 22.5% estimated by the Assessing Officer. As regard the business of trading in edible oil, the Appellant had declared margin of INR 5.6% which was higher in the average of 3.25%. The aforesaid fact was not disputed during the assessment proceedings. The Learned Authorized Representative for the Appellant supported the aforesaid the submissions by placing reliance upon submissions, dated 09/01/2023, file before CIT(A) and submissions dated 29/03/2016 file before the Assessing Officer.

8. Per contra, the Learned Departmental Representative place reliance upon and Assessing Officer and CIT(A). However the Learned Departmental Representative could not controvert the averments made by the Learned Authorized Representative of the Appellant which was supported by the submissions filed before the Assessing Officer and CIT(A) [*place before us as part of the paper-book*].
9. We have considered the rival submission and perused the material on record. On perusal of Financial Statement for the relevant previous year, we find that the aggregate revenue from operations stood at INR 25,81,89,761/- and the same consisted of (a) revenue of INR 16,54,70,561/- from the business of manufacturing of wafer & snacks and (b) revenue of INR 9,27,19,200/- pertain to the business of trading in edible oil. On perusal of the Assessment Order, we find that the Assessing Officer has taken the aggregate turnover of INR 25,81,89,761/- and applied the estimated profit margin rate of 22.5% to arrive at gross profit of INR 5,80,92,696/-. Since the aggregate turnover

included turnover from trading in edible oil business carrying lesser gross margin (to which higher estimated gross profit margin of 22.5% applicable to food manufacturing industry were applied by the Assessing Officer) the overall gross profits of INR 5,80,92,696/- determined by the Assessing Officer were inflated. Similarly, while computing gross profits margin offered to tax by the Appellant, the Assessing Officer adopted the figure of overall turnover and overall profits resulting in incorrect determination of gross profits offered to tax by the Appellant in respect of business of manufacture of wafer & farsan. On perusal of the material on record, we find that the Appellant has offered to tax gross profits at the rate of around 27% which were in excess of profits of gross profit of 22.5% estimated by the Assessing Officer in relation the business of manufacture of wafer & snack. Accordingly, we accept the contention of the Appellant that in the facts and circumstances of the present case no addition was warranted in respect of business of manufacture of wafer & farsan. As regards, the business of trading in edible oil, the contention of the Appellant that the Appellant had offered to tax gross profits at the rate of INR 5.6% which were higher than the average industry gross profit rate of 3.25% was not disputed by the Assessing Officer. Thus, no addition was warranted in the hand of the Appellant. Our view draws support from the decision of the Hon'ble Bombay High Court in the case of The Principal Commissioner of Income Tax-17 Vs. Mohommad Haji Adam & Co.: [2019] 103 taxmann.com 459 (Bombay).

10. In view of the above, we delete the addition of INR.96,08,043/- made by the Assessing Officer. Ground No. 2 & 3 raised by the Appellant is allowed. Since we have allowed Ground No. 2 & 3, Ground No. 1 has been rendered infructuous and therefore, Ground No.1 raised by the Appellant as well as the application

filed for admission of additional evidence is dismissed as being infructuous.

11. In result, in terms of paragraph 8 above, the appeal preferred by the Assessee is allowed.

Order pronounced on 26.08.2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 26..08.2024
Poonam Mirashi,
Stenographer

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai