

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,  
NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 472/DEL/2024[A.Y 2017-18]

Shri Dharam Singh Village Baproli P.O. Bhakhri Tehsil, Narnaul Dist Mohindergarh, Haryana	Vs.	The Income tax Officer Assessing Officer, Narnaul, Haryana
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PAN: BDBPS 0313 P

(Applicant)

(Respondent)

Assessee By : Ms. Usha, CA

Department By : Shri Choudhary, N.C. Roy, JCIT

**Date of Hearing : 04.09.2024**

**Date of Pronouncement : 11.09.2024**

**ORDER**

**PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the NFAC, Delhi dated 16.01.2024 pertaining to A.Y 2017-18.

2. The grievances of the assessee read as under:

"1. In the circumstances and facts of the case that the learned A. O's order as well as the Learned CIT (A) NFAC erred on facts and in law upholding penalty of Rs. 1,23,313/- under section 271B.

2. The Ld. CIT(A) NFAC has failed to appreciate the arrangement of the Mother Dairy with the Appellant as per terms & conditions of the agreement, according to which the relationship between them is that of Principal & Agent and, therefore, there is no requirement of tax audit. The humble appellant was also not liable to have Tax Audit in view of Circular No. 452 F.No.201/3/85-IT(A-II) dated 17/03/1986.

3. Without prejudice to above ground, the Ld. CIT(A) NFAC has failed to appreciate the Appellant an ex-serviceman who was allotted Mother dairy milk booth as commission agent under Self-employment scheme of Directorate General Resettlement (DGR).

4. The appellant craves leave to add to or modify the above grounds of appeal at or before the hearing of the appeal."

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Brief facts of the case are that the assessee is a resident individual who was allotted Mother Dairy Milk Booth as per entitlement of ex-servicemen Self-Employment Schemes of Directorate General Resettlement (DGR).

5. During the preceding A.Y 2016-17, the Assessing Officer/NFAC duly accepted the returned income of Rs. 3,73,330/- vide regular assessment u/s 143(3) dated 28.11.2019. The Assessing Officer/NFAC, however, considered the cash deposits with SBI of Rs. 2,46,62,500/- as turnover of the assessee. Accordingly, the AO was of the view that section 44AB of the Act gets attracted in the case under consideration and levied a penalty u/s 271B of Rs 1,23,313/-.

6. Aggrieved, the assessee went in appeal before the ld. CIT(A)/NFAC who upheld the order of Ld. AO/NFAC.

7. Aggrieved by the order of the ld. CIT(A), the assessee is before us. The ld counsel of the assessee vehemently stated that the assessee being ex-Serviceman officer operating Milk Booth of Mother Dairy on commission basis is not covered u/s 44AB as real turnover is much below to the prescribed limit. It was the say of the ld AR that the

assessee receives uniform and fixed margin/commission which constitutes his taxable income rather than total sales. During the Previous Year 2016-17, the assessee received/accrued gross commission of Rs. 4,62,000 which was duly accepted by the Assessing Officer/NFAC in regular assessment.

8. Further, the ld. counsel for the assessee drew our attention towards the salient Features of Self Employment Schemes of Directorate General Resettlement (DGR) for allotment of Mother Dairy Milk Booths to eligible ex-servicemen. As per said Scheme, in the case of Milk Booths, the ex-servicemen will get higher of the assured income of Rs 11000.00 or commission of 30-35 paise per one litre sale of milk (revised from time to time) and 5 percent for other dairy products. The ld AR argued that the DGR itself has used word Commission which is a substantial proof of the fact that there exists Principal (Mother Dairy) to agent (Assessee) relationship instead of Principal-to-Principal relationship. A copy of extract from website of Directorate General Resettlement Department of Ex-Servicemen Welfare (Ministry of Defence) was produced before us.

9. The Id AR further argued that the assessee was of the bonafide belief that provisions of section 44AB were not attracted in his case and to substantiate the belief of the assessee inter-alia reliance was placed on CBDT circular No. 452 [F. No. 201/3/85-IT(A-II)], dated 17-3-1986 issued by CBDT.

10. The Id AR relied on the following case laws wherein commission was accepted as turnover and penalty u/s 271B of the Act was adjudicated and deleted in case of following Milk booth agents:

1) ITA No. 122/Del/2023 Sh. Naresh Kumar vs. ITO, Charkhi Dadri, Haryana, dated 14th Aug., 2024;

ii) ITA No. 998/Del/2023 Ved Singh vs. ITO, Charkhi Dadri, Haryana, dated 19th Jan. 2024;

iii) ITA No. 5508/Del/2019 date 30th June 2022 Sh. Nikki Tyagi Vs. Income Tax Officer.

iv) ITA No. 1691/Del/2022 Mohammad Daud vs. ITO, Ward 58(1), Delhi, dated 22nd May 2023.

v) ITA 916/Del/2022 dt. 3rd March 2023 Mohd Javed Vs Income Tax Officer

11. Per contra, the Id DR argued that there is principal to principal relationship between the Mother Dairy and the assessee, which is apparent from the certificate issued by the mother Dairy. Hence, it is

argued that the sales proceeds of the assessee should be considered as the turnover of the assessee.

12. Having heard the rival submissions, we have perused the materials on record. We are inclined to agree with the AR that the DGR has used word Commission which shows that the relationship between the Mother Dairy is that of Principal (Mother Dairy) to agent (Assessee). Even though the Mother Dairy has given nomenclature of Principal-to-Principal in its certificate, the nature of activity undertaken by the assessee shows the actual relationship between the Mother Dairy and assessee is that of Principal to Agent. We say so because the Milk booth was allotted on the following terms: -

i) All the proceeds from the sale of milk and other allied products to be deposited immediately or latest by next day in the designated SBI bank account hypothecated in favour of Mother Dairy.

ii) Assessee receives uniform and fixed margin/commission which constitutes his taxable income rather than total sales as turnover.

iii) Expenses like electricity, water, telephone, repair & maintenance expenses related to machinery installed at booth etc. are paid by the Mother Dairy itself.

13. Based on facts as stated above, we are of the opinion that the sales proceeds belonged to Mother Dairy and the assessee turnover was only commission of 4,62,000/- from the sales of Dairy and milk products. The Id DR has not controverted the fact that in earlier years, no penalty was levied u/s 271B on this issue.

14. As the value of gross commission received from the aforesaid business as turnover is much below than the prescribed limit of Rs. 1 Crore u/s 44AB of the Act, we hold that the provisions of section 44AB of the Act were not attracted in his case. The CBDT Circular No. 452 [F. No. 201/3/85-IT(A- II)], dated 17-3-1986 also supports our view which in cases of kachha arahati has advised that the turnover did not include sales effected on behalf of the principals and only gross commission has to be considered for the purpose of section 44AB. The relevant extract of which is re-produced as follows:

"4. The Board are advised that so far as kachha arahtias are concerned, the turnover does not include the sales effected on behalf of the principals and only the gross commission has to be considered for the purpose of section 44AB."

The remuneration of a kachha arahtia consists solely of commission and he is not interested in the profits and losses made by his constituent as is not the case with the pucca arahtia.

15. In the instant case, we are of the opinion that the assessee is similarly placed to that of the kachha arahtia, who gets remuneration which consists solely of commission and he is neither interested into nor entitled to the profit and losses made by his principal (ie., Mother Dairy in given case).

16. We also find that the co-ordinate Bench in the case of Ved Singh ITA No. 998/DEL/2023 order dated 19.01.2024 and the decision in the case of Mohammad Daud ITA No. 1691/DEL/2022 order dated 22<sup>nd</sup> May 2023 wherein under similar circumstances, have vacated the impugned penalty. In view of the above facts and circumstances and legal position, penalty levied u/s 271B upheld by the ld. CIT(A) CIT/NFAC is

quashed and we direct the Assessing Officer to delete the penalty of Rs. 1,23,313/- so levied.

17. In the result, the appeal of the assessee in ITA No. 472/DEL/2024 is allowed.

The order is pronounced in the open court on 11.09.2024.

Sd/-

**[CHALLA NAGENDRA PRASAD]  
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]  
ACCOUNTANT MEMBER**

Dated: 11<sup>th</sup> SEPTEMBER, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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