

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
and  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.3485/DEL/2024  
(Assessment Year: 2018-19)**

Markande Mishra,  
1-D, Jamini Park, Najafgarh,  
Delhi – 110 043.

vs.

Assessment Unit,  
Faceless Assessment.

**(PAN : APHPM3694N)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Gopal Aggarwal, CA  
REVENUE BY : Ms. Baljeet Kaur, CIT DR

Date of Hearing : 23.01.2025  
Date of Order : 23.01.2025

**ORDER**

**PER S.RIFAUR RAHMAN,AM:**

1. This appeal has been filed by the assessee against the order of Id. Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi dated 22.08.2023 for the Assessment Year 2018-19.
2. Brief facts of the case are, assessee is engaged in the business of supplying milk and having agency of AMUL, he purchased milk from AMUL centre and sell to other retailers. From the sale of milk, the assessee received cash which was deposited into his bank account for making payments to AMUL. From the deposited amount, the payments are made to AMUL through cheques. These

are normal business practice adopted by the milk suppliers. Assessee filed its return of income declaring total income of Rs.5,35,836/-. The assessment of the assessee was completed under section 144 of the Income-tax Act, 1961 (for short 'the Act') vide order dated 20.04.2021 assessing the total income at Rs.10,78,05,316/-. The case was selected for scrutiny through CASS in order to verify the large cash deposited in the bank during demonetization period and notice was issued to the assessee. The cash deposit of Rs.10,72,69,430/- made during the year was treated as unexplained cash credit u/s 68 of the Act. However, assessee was not aware of the above facts. Therefore, none appeared on behalf of the assessee and assessment was complete u/s 144 of the Act

3. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and before Id. CIT (A), assessee has submitted in detail all the facts and also relied on the case laws in which similar cases are adjudicated. After considering the submissions of the assessee, Id. CIT(A) found the submissions not acceptable and dismissed the appeal filed by the assessee.
4. Aggrieved assessee is in appeal before us raising following grounds of appeal :-

*“1. That on the facts and circumstances of the case, the Ld. CIT (A) has erred on facts and in law in confirming the order of the Assessing officer who passed the order under section 143(3) read with section 144B of the income Tax Act, 1961 by treating entire deposit Rs.10,72,69,430/- collected in normal course of business of sale of AMUL milk and products as unexplained income under section 68 of the Act are wholly illegal, unlawful and against the principles of natural justice.*

*2. That the Ld. CIT (A) has erred on facts and in law in confirming the order of the Assessing officer in calculating the unrealistic and unbelievable 100% profits from the business of sale of AMUL milk and products without any basis and enquiry as the conclusion and inferences*

*drawn by the Ld. Assessing Officer are based on suspicious, conjectures, surmises and irrelevant consideration in adopting wrong yardstick in holding that the cash deposits are nothing but income from undisclosed sources. What is to be subject for taxation is only real income over which the assessee possesses a right and not any other thing.*

*3. That the Ld. CIT (A) has erred on facts and in law in confirming the order of the Assessing Officer in questioning the source of cash deposits when all the purchases are made using the cash sales of AMUL milk and products deposits into bank account and making payment to AMUL entirely from the bank account.*

*4. That the Ld. CIT (A) has erred on facts and in law in confirming the order of the Assessing officer in initiating penalty proceedings u/s 271AAC.*

*5. That the Ld. CIT (A) has erred on facts and in law in confirming the order of the Assessing officer in charging interest u/s 234a, 234B,234C.”*

5. At the time of hearing, ld. AR brought to our notice relevant facts on record and also submitted various decisions of the coordinate Bench on the same issue and cash deposited by the milk vendors and agencies and relied on the following case laws :-

- (a) Mohammad Daud vs. ITO (ITAT Delhi) – ITA No.1691/Del/2022;
- (b) Mohd. Javed vs. ITO Ward 48 (5), ITA No.916/Del/2022 AY 2017-18;
- (c) Dharam Singh vs. ITO (ITAT Delhi) Appeal No.: ITA No.472/Del/2024;
- (d) Ved Singh, Delhi vs. ITO, Charkhi Dadri, Haryana (ITAT Delhi) Appeal No.: ITA No.998/Del/2023;
- (e) Sh. Naresh Kumar vs. ITO (ITAT Delhi), ITA No.122/Del/2023; and

(f) Sh. Nikki Tyagi vs. ITO (ITAT Delhi), Appeal No.: ITA No.5508/Del/2019.

6. On the other hand, ld. DR of the Revenue relied on the orders of the lower authorities.
7. Considered the rival submissions and material placed on record. We observed that assessee is engaged in the business of milk and also having an agency of AMUL. He purchases milk from AMUL centre and distributes the same to other retailers. From the sale of milk, the assessee receives cash which was deposited in bank account for making the payments to AMUL. The assessee has made payment to AMUL from the cash deposits made by the assessee out of the collection of sale of milk. We observed that similar issue was considered by the coordinate Bench in the case of Mohammad Daud vs. ITO ITA No.1691/Del/2022 and it was held that coordinate Bench considered the issue of penalty u/s 271B of the Act on the cash deposit made by the assessee who happened to be a milk trader who collects cash on sale of milk and milk products in the assigned areas and earns fixed commission. Even though the issue raised in these appeals relating to section 271B still on merit whether the assessee has the source of income through milk distribution and when the assessee does the activities throughout the year and consistently deposited the cash and remits the amount back to the AMUL. In this case, the assessee has filed bank statement indicating the cash deposits and subsequent payment to AMUL throughout the year. The case of the assessee was selected for scrutiny mainly on the basis of huge cash deposits during demonetization period.

However, due to non-appearance of the assessee during assessment proceedings, the whole amount deposited by the assessee from the business of running milk during the year was added as undisclosed income u/s 68 of the Act. The same addition was sustained by the Id. CIT (A). From the facts on record, it is clear that assessee has made deposit out of the cash deposits from the sale of milk and payment also made only to AMUL out of the cash deposits by the assessee out of milk sale. Therefore, there is merit in the argument of the Id. AR in this case. Accordingly, we are inclined to decide the issue in favour of the assessee and delete the addition made by the Assessing Officer.

8. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open court on this 23<sup>rd</sup> day of January, 2025 after the conclusion of hearing.**

**SD/-  
(SATBEER SINGH GODARA)  
JUDICIAL MEMBER**

**SD/-  
(S.RIFAUH RAHMAN)  
ACCOUNTANT MEMBER**

**Dated: 23.01.2025  
TS**

Copy forwarded to:

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

**ASSISTANT REGISTRAR  
ITAT, NEW DELHI**