

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'A' BENCH, LUCKNOW**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.75/LKW/2024
A.Y. 2017-18

Dugdh Utpadak Sahakari Sangh Limited, Tripula Chauraha, Lucknow Allahabad Road, Raebareili	vs.	Income Tax Officer-1, Raibareli-New
PAN: AAAAD0609H		
(Appellant)		(Respondent)

Assessee by:	Sh. Samrat Chandra, C.A.
Revenue by:	Sh. Amit Kumar, DR
Date of hearing:	25.09.2025
Date of pronouncement:	30.09.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.:

This is an appeal filed by the assessee against the orders of the Id. CIT NFAC, dated 26.3.2024 dated 29.12.2023 wherein the Id. CIT(A) has dismissed the appeal of the assessee against the order passed by the Id. Assessing Officer under section 144 of the Income Tax Act on 19.12.2019. The grounds of appeal are as under:-

"1. Because on the facts and in the circumstances of the case the order of Ld. CIT(A) is bad in law and deserves to be quashed being illegal.

2. Because on the facts and the circumstances of the case, the learned CIT(A) has erred in law and in facts in confirming assessment order against the non-existent entity even when the merger of the same was duly Communicated to the Assessing Officer vide various letters.

3. Because on the facts and the circumstances of the case, the learned CIT(A) has erred in law and in facts in confirming net profit of 8% of total credit in bank accounts held in the name of Baroda UP Gramin Bank Rae Bareli, even when such deposits were duly disclosed in the assessment of Lucknow Producers Cooperative Milk Union Limited (being merged entity) and no addition have been made and Return Income have been accepted by the learned Assessing Officer for Lucknow Producers Cooperative Milk Union Limited."

4. Because, on the facts and in the circumstances of the case, the CIT (A) has passed the order without providing the assessee with a due and proper opportunity of

hearing and production of documents therefore the impugned order deserves to be set-aside being bad in law.

5. The appellant craves for leave to add, modify, amend or delete any other and further grounds of appeal with permission."

2. The facts of the case are that the case of the assessee was selected for scrutiny in terms of the guidelines of the CBDT in Operation Clean Money. The Id. AO noted that the assessee had not filed a return therefore, a notice under section 142(1) was issued. Since, no compliance was made, a show cause notice under section 144 of the Income Tax Act was issued to the assessee by the then Id. AO. Subsequently, the file was transferred to the ITO-1, Raibareli, who issued another notice under section 142(1), followed by a notice under section 144. It was only after a final show cause notice under section 144 was issued on 14.11.2019 that the assessee filed a reply on 16.11.2019 indicating that it was registered Cooperative Society dealing in milk and milk products and its sales were through different milk agents throughout Raibareli. Its agents deposited the entire amount of sale in cash, at the cash section of the dairy and the same cash was subsequently deposited into the bank accounts. The entries with regard to the same were recorded in the accounts section. Furthermore, it was informed that the unit had since been merged with the Lucknow Producers Cooperative Milk Union Limited in February, 2016 hence the ITR and computation had been filed by the head office and the assessee only remained as a branch. The Id. AO noted that no registration certificate of the society with the Registrar Societies had been filed and no information had been provided regarding the merger of the society in Lucknow Producers Cooperative Milk Union Limited. Furthermore, no copy of ITR and computation of income that was stated to be filed by the head office, was filed by the assessee hence the Id. AO declined to consider the submissions made by the assessee at their face value and decided to assess the assessee under the status of AOP. He noted that no books of accounts, original documents, registers, ledgers or cash books had been produced by the assessee as required by it, from various notices issued by the Department and therefore, the deposits made by the assessee during the demonetization period

and the previous year were not verifiable. In the absence of the books of accounts, the ld. AO held that he had no option but to treat the deposits as the turnover of the assessee. He also made enquiries with the Deputy / Assistant Commissioner of Commercial Taxes, Raibareli seeking a copy of the assessee's annual return for the F.Y. 2014-15 to 2017-18, but was informed that no returns had been filed by the assessee. Therefore, the ld. AO treated the total amount of deposits amounting to Rs. 4,26,05,977/- with Baroda U.P. Gramin Bank, Raibareli as the turnover of the assessee and calculated the profits @ 8% thereon. Accordingly, the income of the assessee was computed at Rs. 34,08,480/- and the assessee was assessed at this income.

3. Aggrieved with the said order, the assessee filed an appeal with the CIT(A), Faizabad, which was later migrated to the National Faceless Assessment Centre. Upon consideration of the written submissions filed by the assessee, the ld. CIT(A) decided to seek a remand report from the Assessing Officer. The ld. AO, in his remand report, pointed to the non-compliance by the assessee during the assessment proceedings and the failure to submit necessary documents and he justified the decision to compute the profit in the hands of the assessee as per the estimates on this account and he further stated that the assessee had continued to use its old account number and old PAN number therefore, it had been assessed in its original capacity. It was also submitted by the ld. AO that the entries in the bank account did not match with the statements of accounts that had been submitted by the assessee.

4. The remand report of the ld. AO was forwarded to the assessee for a rejoinder. In response, it was submitted that the assessee had been merged with Lucknow Producers Cooperative Milk Union Limited w.e.f. February, 2016, therefore, no assessment could be made on a non-existent entity. Further, the said merger order issued on 1.02.2016 by the Dugdh Ayukt was attached for information. Assessee further submitted a copy of the registration certificate of itself as well as of the Lucknow Producers Cooperative Milk Union Limited, ITR and

computation, balance-sheet, trading and profit & loss account for the relevant year under consideration, wherein it submitted that the total sale of milk and milk products of the Raibareli unit had been reflected in the identified bank account in Baroda U.P. Gramin Bank. The only error committed by the staff of the Raibareli unit was that they had not updated the PAN of the Lucknow Producers Cooperative Milk Union Limited in the said bank account. It was, therefore, prayed that the status of the assessee should be accepted as a registered cooperative society and as the transactions had been duly disclosed, no estimated addition was called for. Regarding the claim of the Id. AO that he was not able to fully co-relate the relevant bank statements, the assessee prayed for an opportunity to rebut the same. The Id. CIT(A) considered the submissions made by the assessee and held that the assessee had not been able to demonstrate, with any supporting evidence, that the gross receipts in the assessee's bank were incorporated in the gross receipts of Lucknow Producers Cooperative Milk Union Limited. He noted that the PAN of the assessee continued to be used despite the merger and no intimation had been given to the jurisdictional AO regarding the merger and surrender of PAN. He noticed that the assessee had every opportunity to produce the relevant documents during the course of assessment but had not done them and therefore, there was no occasion to consider them now as the assessee did not fulfil the conditions laid down under Rule 46A. Therefore, the Id. CIT(A) upheld the addition made by the Id. AO and dismissed the appeals of the assessee.

5. The assessee is aggrieved at this dismissal of its appeal and has accordingly come in appeal before us. It was submitted that the Id. CIT(A) had erred in affirming the best judgment assessment that had been made on a non-existent entity by the AO without considering the actual facts and replies. It was submitted that the assessee had been merged into the Lucknow Producers Cooperative Milk Union Limited on 1.02.2016 and after the merger, it had become a non-existent dependent entity operating only as a branch. Hence, it was not liable to file income tax return for the assessment year 2017-18. It had informed about the merger twice, first to

ACIT-1, Lucknow on 8.01.2018 and then to ITO-1, Raibareli on 28.12.2019. The ld. CIT(A) had ignored that the assessee had provided various evidences that the deposits made in the bank account at Baroda U.P. Gramin Bank had already been considered in the financial statements and books of accounts of the head office and reflected in its income tax returns. All documents had been submitted before the ld. CIT(A). The only error was that the staff of the Raibareli unit had omitted to update the PAN in the concerned bank account. It was, therefore, prayed that the ld. CIT(A) had erred in affirming the best judgment assessment made by the AO which was completely based on surmises and conjectures. It was further submitted that proper opportunities had not been given to the assessee and the case had been transferred from ACIT-1, Lucknow to ITO-1, Raibareli without giving any opportunity to the assessee as provided under section 127(2) of the Act. It was, therefore, submitted that the entire order was *void ab initio* and accordingly it may be quashed.

6. On the other hand, Sh. Amit Kumar, Sr. DR (hereinafter referred to as the ld. DR) submitted that the assessee had not made compliance before the ld. AO and not fulfilled the conditions for admission of additional evidence and therefore, the ld. CIT(A) was justified in refusing to consider the same. It was, therefore, prayed that the addition may be confirmed in the hands of the assessee.

7. We have duly considered the facts and circumstances of the case. It is seen that the assessee was merged with the Lucknow Producers Cooperative Milk Union Limited on 1.02.2016 vide a merger order issued by the Dugdh Ayukt, Dugdh Sahakari Samitiyan, U.P. Lucknow and after the merger, the assessee became a branch of another entity. Therefore, it was not obliged to file a return in respect of deposits made into the bank account in the financial year relevant to the assessment year 2017-18. The assessee has admitted that its staff at Raibareli committed a mistake in not updating the PAN details in the said bank account maintained with Baroda U.P. Gramin Bank and we note that simply a failure to do so, cannot be a ground to assess the deposits in the hands of the assessee. It is seen that the ld.

CIT(A) has refused to consider the various evidences submitted by the assessee on the grounds that it did not meet with the conditions under Rule 46A. However, we observe that the assessee had provided intimation to the Id. AO of its merger with Lucknow Producers Cooperative Milk Union Limited and thereafter, the evidences sought by the Id. AO were to be obtained from the existing entity rather than the branch of the same. In view of this, we restore this matter to the file of the Id. AO so that he may consider the evidences filed by the assessee and satisfy himself that the receipts from the sale of milk have been duly accounted for in the books of M/s Lucknow Producers Cooperative Milk Union Limited and thereafter vacate the addition made in the hands of the assessee. In case, the assessee fails to establish the source of the deposits in the said bank account, the Id. AO may take further action in the hands of the parent entity, but no action will lie against the assessee as it ceases to exist as an independent assessee after 1.02.2016.

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

Order pronounced on 30.09.2025 in open Court.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

DATED: 30/09/2025

Sh

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CITDR, ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.