

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE MS. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1083/SRT/2024

Assessment Year: 2017-18

(Hybrid hearing)

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| Kaniyalal Savljibhai Rajpurohit<br>Gangasagar Apartment<br>Tarsadi, Mangrol, Surat-394<br>120 | बनाम/<br>Vs. | Income Tax Officer, Ward-2,<br>Bardoli, Income Tax Office, 2 <sup>nd</sup><br>Floor, BSNL Building, Opp. Jalaram<br>Temple, Station Road, Bardoli-394<br>601 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AYLPR 4526 R  |              |  |
| (अपीलार्थी/Appellant)   |              | (प्रत्यर्थी/Respondent)  |

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| निर्धारिती की ओर से /Appellant by       | Shri Mayur Thakkar, CA |
| राजस्व की ओर से /Respondent by          | Shri Ajay Uke, Sr-DR   |
| सुनवाई की तारीख/Date of Hearing         | 15/07/2025             |
| उद्घोषणा की तारीख/Date of Pronouncement | 29/08/2025             |

**आदेश / O R D E R**

**PER BIJAYANANDA PRUETH, AM:**

This appeal by the assessee emanates from order passed under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.08.2024 by the Commissioner of Income-tax (Appeal) Addl/JCIT(A)-5, Mumbai [in short, "CIT(A)"] for assessment year (AY) 2017-18, which in turn assessment order passed by Assessing Officer (in short, "AO") u/s 144 of the Act on 12.11.2019.

2. Ground of appeal raised by the assessee for the appeals are as under:

1. The Assessing Officer and Commissioner Appeal have erred in law and in facts, in considering the higher percentage of profit.
2. The Commissioner Appeal Mumbai has passed the order without territorial jurisdiction in our case.

*3. I pray to you to allow us to add, edit or delete any of the ground of appeal during hearing.”*

3. Brief facts of the case are that the assessee did not file return of income for A.Y. 2017-18 either u/s.139 of the Act or in response to notice issued u/s.142(1) of the Act. As per the ITD database, it was observed that the assessee had filed his return of income on 11.09.2019; however, the assessee was required to file his ROI on or before 31.03.2018 in compliance to notice issued u/s.142(1) of the Act. Since the assessee had filed ROI beyond the time limit as prescribed u/s.142(1) of the Act, therefore, ROI filed by the assessee on 11.09.2019 had been treated as invalid and notice issued u/s.142(1) of the Act dated 26.12.2017 was treated as not complied.

3.1 The appellant is an individual carrying on business of distributorship of Amul milk and milk products (earlier known as 'Mother Dairy'), in Kosamba since January, 2016. As per the information received by the department, appellant had deposited cash of Rs.21,34,600/- in his bank accounts during the demonetization period. Since the appellant failed to file the return of income, therefore, the source of cash deposits remained unexplained. In reply to the notice u/s 142(1) of the Act, the assessee admitted of having deposited cash of Rs.21,34,600/- during demonetization period. He was asked to submit quantity-wise and item-wise details of sales and purchases of milk and milk products along with purchase and sales bills, day to day stock register, cash book, bank book, etc. In compliance of the same, appellant could only submit

copy of cash book, bank book and ledger accounts from the books of Amul and profit margin certificate received from Gujarat Cooperative Milk Marketing Federation (GCMMF) for the FY 2016-17. Since appellant failed to furnish complete details required by the AO, the actual profit earned by the appellant in relation to his business couldn't be ascertained. In the absence of requisite details and supporting evidences, profit of the appellant was determined at Rs.19,82,353/-, being @ 8% of the total turnover of Rs.2,47,79,409/-. This estimated profit of Rs.19,82,353/- was added to the total income of the appellant without allowing any claim of expenses. Accordingly, total income of the appellant was assessed at Rs.19,82,353/-. Aggrieved by the addition made by the AO, the assessee filed appeal before CIT(A).

4. It was observed by CIT(A) that appellant produced the gross margin certificate issued by GCMMF during the assessment proceedings, as per which the maximum gross profit margin for distributors was around 2.9%; however, the AO had rejected the gross profit as per the said certificate without adducing any cogent reasons. It was further observed that AO had also not compared the gross profit margin of the other assesseees in similar line of business and no justification was given as to how he estimated income @ 8% in the assessment order. For estimating the profit, the AO should have a look at the margin returned in comparable cases or even in appellant's own case in the preceding years. However, no such exercise had been done by the AO. It was also seen that appellant declared profit margin of 1.68% to 2.2% in the

subsequent years AYs 2018-19 to 2023-24. The CIT(A) adjudicated the appeal keeping in view the profit shown by the appellant in subsequent years as well as the certificate of GCMMF furnished by the appellant. Considering the fact that the appellant failed to file the return of income and was also not able to produce the sales and purchase bills and the stock register, the total income of the appellant was restricted to 4% of the total turnover of Rs.2,47,79,409/- by CIT(A). Hence, the appeal of the appellant was partly allowed by the CIT(A).

5. Aggrieved by the order of CIT(A), the appellant has filed present appeal before this Tribunal. The Learned Authorized Representative (Ld. AR) of the appellant submitted a paper book containing statements of facts, grounds of appeal, reply to show cause notice of AO, audit report, bills of various expenses, gross profit margin certificate issued by GCMMF, etc. It was contended by him that as per the certificate issued by GCMMF, GP rate ranges from 1.5% to 2.9% on various products of milk, therefore, GP should be restricted to 2.2%.

6. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) for the revenue supported the order of the lower authorities.

7. We have heard both the parties and perused the materials on record carefully. It is undisputed that the appellant is engaged in distributorship of Amul milk and milk products. The GP margin certificate issued by GCMMF categorically shows that distributors' margin ranges between 1.5% and 2.9%

depending upon the product mix. This certificate has not been controverted by the Revenue with any cogent evidence. Further, appellant's returns of income in the subsequent assessment years 2018-19 to 2023-24 reveal profit margins consistently in the range of 1.68% to 2.2%. This trend establishes the business model and profitability of the appellant's distributorship business. The AO, while estimating profit @ 8%, has not referred to any comparable case in the same line of business nor has he drawn any basis from appellant's past or subsequent performance. The estimation is, therefore, unsustainable. Though the CIT(A) has rightly rejected the AO's estimation, he was not correct in adopting 4% profit margin. This rate is again without any comparable cases in similar line of business and much higher than industry norm certified by GCMMF as well as appellant's demonstrated performance. At the same time, it is also true that appellant failed to furnish complete primary records such as sale and purchase bills, stock register etc. Considering the totality of the facts, it would fair and reasonable to estimate the profit @ 2.7% of the appellant's turnover of Rs.2,47,79,409/-. This would reasonably align with GCMMF's maximum margin of 2.9% and above the appellant's maximum margin of 2.2%. Accordingly, the AO is directed to compute the income of the appellant @ 2.7% on the turnover of Rs.2,47,79,409/-. Ground No. 1 is, partly allowed.

8. The appellant has also challenged the validity of the order on the ground that the CIT(A), did not possess territorial jurisdiction over the appeal.

In this regard, we note that the Central Board of Direct Taxes (CBDT), vide Notification No. 36/2023 dated 29th May, 2023, has introduced the e-Appeals Scheme, 2023. Under this scheme, all appeals before the first appellate authority are handled in a faceless, electronic manner through the National Faceless Appeal Centre (NFAC), which allocates appeals to Commissioners (Appeals) across India by an automated system. Once such e-allocation system has been put in place, the concept of fixed territorial jurisdiction ceases to exist for the purposes of appellate proceedings. What matters is the competence of the authority to act as Commissioner (Appeals) under the Act, and not the geographical location of the office. In the present case, the appeal was adjudicated by the Jt./Addl.CIT(A), Mumbai under the e-Appeals frame work. The appellant has not shown any prejudice caused to him on account of such allocation. Therefore, this ground is devoid of merit and is accordingly, dismissed.

9. Ground No.3 is general in nature and does not require any adjudication.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963  
on 29/08/2025 in the open court.

**Sd/-**  
**(SUCHITRA R KAMBLE)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**  
सूरत /Surat  
दिनांक/ Date: 29/08/2025  
**Dkp Outsourcing Sr.P.S\***

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**लेखा सदस्य/ ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अद्योषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

// True Copy //

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत