

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE : SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 342/Agr/2025
Assessment Year: 2013-14**

Hardayal Milk Products Private Limited, 318, Shambhoo Nagar, Shikohabad.	Vs.	DCIT, Circle 2(2)(1), Firozabad.
PAN :AABCH7576E		
(Appellant)		(Respondent)

Assessee by	Sh. Sahib P. Satsangee, C.A.
Department by	Sh. R.P. Maurya, CIT (A)-1/DR

Date of hearing	16.12.2025
Date of pronouncement	29.12.2025

ORDER

PER : S. RIFAUR RAHMAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 25.06.2025 for the Assessment Year 2013-14.

2. Brief facts of the case are that the assessee filed its original return of income on 27.09.2013, declaring total income of Rs.1,07,22,700/-. The case of the assessee was selected for scrutiny under CASS. Accordingly, notices u/s. 143(2) and 142(1) of the Act along with questionnaire were issued and served on the assessee. In response, the

assessee submitted relevant information. The assessee is engaged in the business of processing of milk and manufacturing of milk products etc. The manufacturing plant of the assessee is located at Etah Road, Shikohabad, district Firozabad. The Assessing Officer during the assessment proceedings, obtained the details of sales, gross profit and net profit declared by the assessee during last two years including the present assessment year. The relevant chart is reproduced at page 2 of the assessment order. The Assessing Officer observed that the assessee has declared net profit around 0.4%, which was found to be on lower side in light of the profit margins of other players in this line of business. During examination of books of account of the assessee, he found that the assessee sold bulk of its milk to three entities, namely, M/s. Kamal Dairy, M/s. Prashant Dairy and M/s. Vidhata Dairy. He verified the above three proprietorship concerns and conducted enquiries. He found that these parties had huge debtors balances outstanding in assessee's books of account on 31.03.2013 and the assessee failed to establish the identity of bulk of its debtors and filed incomplete details of the debtors with respect to father's name, address and failed to substantiate the genuineness of the business transactions. He also observed that the transactions, financial flow and method of business are also identical in each of the above said entities. Further, he

observed that one of the major suppliers of the milk of assessee is M/s. Jai Dairy and the assessee has claimed to have purchased milk of Rs.90.95 crores during the year under consideration. He observed that as per the information received from jurisdictional Assessing Officer of M/s. Jai Dairy, they have failed to maintain proper and complete books of account and also failed to establish genuineness of the purchase of milk claimed to have made by it. Since the assessee failed to submit relevant information, he came to the conclusion that it is mere arrangement of financial flow and do not appear to be completely genuine and the books of account maintained by the assessee do not represent true and complete nature of quantum of its income. He issued show cause notice to the above said parties and after considering the submissions of the assessee, Assessing Officer observed that he does not ignore any factual finding – whether favourable or otherwise to the assessee. Accordingly, he rejected the books of account maintained by the assessee after obtaining opinion from Addl. CIT, Range-2(2) that *“it would be inappropriate to reach the conclusion that the entire sales/purchases are mere financial terms flows. Given the fact that there is actual production on the face of it and the electricity consumption would corroborate the same, it would be appropriate that having rejected the books of accounts certain estimates of profits on account of*

unverifiable records be arrived at". Based on the above directions, the Assessing officer rejected the books of account and invoking the provisions of section 145(3) of the Act, estimated the profit based on comparative profit shown by other players in the similar line, which is usually in the range of 0.8% to 1.25%. He observed that considering the totality of fact and circumstances of the case, net profit rate of 1% is found to be reasonable. He, therefore, estimated income @ 1% and proceeded to estimate the income at Rs.2,50,43,467/-. After making the adjustment of depreciation claimed by the assessee in its profit and loss account and depreciation as per Income-tax Act, also making other additions of gratuity, EPF and disallowance of depreciation as discussed in assessment order to the extent of Rs.3,78,539/-, he has determined total taxable income at Rs.2,59,89,006/-.

3. Aggrieved with the above order, assessee preferred an appeal before the NFAC, Delhi and filed detailed submissions. After considering the detailed submissions filed by assessee, learned CIT(Appeals) deleted the other disallowances made by the Assessing Officer relating to subsidized cost of new assets relating to factory building and plants and machinery. However, he sustained the estimation made by the Assessing Officer @ 1%.

4. Aggrieved, the assessee is in appeal before us, raising the following grounds :

“1. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the estimation of income by the AO at 1% of the turnover amounting to 72,50,43,496, resulting in an arbitrary addition of 71,48,87,770, solely based on assumptions, conjectures, and surmises, without any comparable case OR corroborative material to substantiate such estimation.

2. That on the facts and in the circumstances of the case and in law, the order passed by the learned CIT(A) NFAC (hereinafter referred to as CIT(A)) is bad in law and liable to be quashed, being in violation of the principles of natural justice. The learned CIT(A) erred in dismissing the appeal without duly appreciating the partial submissions made by the appellant and without affording a reasonable opportunity for further submission.

3. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the action of the Assessing Officer in invoking the provisions of section 145(3) of the I.T. Act, 1961 without identifying OR pointing out any specific defect OR inconsistency in the books of account maintained by the appellant in the regular course of business.

4. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that transactions undertaken by the appellant with M/s Kamal Dairy, M/s Vidhata Dairy and M/s Prashant Dairy were not genuine, despite there being no cogent evidence on record to demonstrate that such transactions were sham OR lacking in commercial substance. The learned AO, in fact, accepted the genuineness of the transactions, and no mismatch in quantitative OR financial records was established.

5. That on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in sustaining the rejection of books of account merely based on alleged deficiencies in the accounts of certain buyers and a supplier, without establishing any defect, discrepancy, OR inconsistency in the appellant's own books of account. The action is arbitrary and legally unsustainable as the lapses, if any, in the accounts of external parties cannot form the basis for rejecting the appellant's duly maintained books of account.”

5. At the time of hearing, learned AR brought to our notice complete facts of the case and also submitted a detailed written submission, which is reproduced below :

Written Submissions Sheweth as under

1.0 Background facts leading to the present case are that the appellant is a company engaged in the business of processing milk and manufacturing various milk products, including pasteurized milk, ghee, butter, and milk powder. The company operates a fully functional manufacturing facility located on Etah Road, Shikohabad, District Firozabad. For the assessment year under consideration, the appellant filed its return of income on 27.09.2013, declaring a total income of Rs. 1,07,22,700/- and the assessment u/s. 143(3) was completed on 31.03.2016, assessing total income of appellant at Rs.2,59,89,010/- after rejecting his books of account u/s. 145(3) of the IT Act, 1961 and making additions on account of alleged low net profit and depreciation disallowance on fixed assets.

The perusal of the impugned assessment order would reveal that the Id. Assessing Officer while considering the net profit rate of the assessee has given a comparative analysis of the turnover and profits of the appellant for the three assessment years as under:

A.Y.	Sales (Rs.)	GP (Rs)	G.P. Rate	NP(Rs.)	N.P.
2011-12	2,57,81,46,0	11,66,59,00	4.52%	95,36,000	0.37%
2012-13	2,43,12,66,0	14,04,74,00	5.78%	96,45,000	0.40%
2013-14	2,50,43,49,6	14,24,92,19	5.69%	1,01,55,7	0.41%

The aforesaid table would clearly demonstrate that the trading results disclosed by the appellant are stable and consistent, showing reasonable profit margins. There is no significant variation warranting any adverse inference. Further, despite the consistent financial performance, the Ld. Assessing Officer made a bald presumption that the turnover had slightly increased compared to the preceding year, but the NP rate appeared low in comparison to other entities in the same line of business operating in the vicinity. However, no comparable cases were cited or placed on record to substantiate this fake presumption of low profit rate. The assessment order nowhere provides specific instances of similar businesses with higher net profit rates. Without such comparisons, the rejection of books of account and the application of arbitrary net profit rate of 1% are against the facts and not sustainable in the eye of law. The Assessing Officer further based his findings, as to the rejection of appellant's books of account and estimation of net profit, on the inquiries conducted in the assessment proceedings of three buyers and a supplier of the appellant, namely M/s. Kamal Dairy, M/s. Vidhata Dairy, M/s. Prashant Dairy (Buyers) and M/s. Jai Dairy (supplier of raw milk). He appears

to have been guided from the facts gathered from the information allegedly shared by concerned AOs of the above three buyers and supplier of appellant. **(Para 4 of AO's order also Refer PB Page No. 632 internal Para 2.2)**

The learned CIT(A) NFAC vide his order dated 25.06.2025 upheld the addition for estimation of profit @1% of the turnover amounting to Rs. 2,50,434,496 made by the learned AO with the observation that the assessee is unable to establish the authenticity of books of accounts in as much as it failed to establish the genuineness of all purchases and sales. The learned CIT(A) failed to appreciate and consider the submissions of the appellant **(Refer PB Page No. 630 to 703)** providing the reasonability of the rate of Net Profit declared; basis of rejection of books of the appellant by the learned AO is based on assumption and conjectures guided with the enquiries conducted in the assessment proceedings of three buyers and a supplier of the appellant. He failed to appreciate that no defects or deficiencies were pointed out in the books of the appellant or any direct evidence has been brought on record to demonstrate that the appellant's transactions were sham or that the quantitative records did not match the financial entries.

It is not the case of the learned AO in respect of any defect or deficiency in the maintenance of the books of account, valuation of the closing stock, unexplained cash credits, unverifiable or non-genuine purchases or sale of goods or any material to meet the test of deduction of true and correct picture due to improper records. The mistakes or errors in the maintenance of the books and record in the case of the buyers or supplier of the appellant could not have resulted in the rejection of the books of the appellant. The business results of M/s Vidhata Dairy, M/s Jai Dairy, and M/s Kamal Dairy were accepted by the Department in the preceding year, despite having the same nature, pattern, and volume of transactions and, therefore, no adverse inference can be drawn against him on the basis of alleged discrepancies noted in their cases for the year under consideration.

It is worthwhile to note that the learned AO while considering the shortcomings of aforesaid three buyers on selective basis, has conveniently overlooked other major customers, M/s Satya Prakash Dairy, Proprietor Sh. Satya Prakash (PAN: BWJPP5434F) **(Refer PB Page No. 646-647 for his assessment order for A.Y. 2013-14);**

M/s Prashant Dairy, Proprietor Sh. Prashant Kumar (PAN: BZJPK2849C) **(Refer PB Page No. 648-649 for assessment order for A.Y. 2013-14);**
Their books of account books have been accepted by the department for the assessment year in question.

Similar is the position of the supplier where the learned AO has conveniently omitted the reference to another key supplier, M/s Raghuram Dairy Pvt. Ltd. (PAN: AAFCR4568Q), **(Refer PB Page No. 650-651 for assessment order for A.Y. 2013-14)**

With regards to the buyer M/s Prashant Dairy the response to Commission under section 131(1)(d) to the enquiry by learned ITO Ward-3(3), Bulandshahr dated 01.03.2016 along with the Annexures viz., (a) Enquiry report of Income Tax Inspector dated 23.02.2016, (b) Confirmed copy of ledger account of the appellant in the books of M/s Prashant Dairy and (c) Copy of Bank Statement of M/s Prashant Dairy explain the genuineness of the business operations of the appellant is placed on record. **(Refer PB Page Nos. 652-698)**

The copy of letter issued by the learned AO dated 03.02.2016 seeking information from the learned Assessing Officer of M/s Jai Dairy and M/s Kamal Dairy is filed **(Refer PB Page Nos. 699-700)**

The copy of the report of the ITI in respect of enquiries of M/s Jai Dairy and M/s Raghuram Dairy Pvt. Ltd. consequent to the directions of the learned Assessing Officer dated 22.12.2015 is filed. **(Refer PB Page Nos. 701-703)**

1.1 During the course of the assessment proceedings the appellant produced complete books of account maintained including the following details substantiating the genuineness of the business, required by the Id. Assessing Officer.

Particulars	PB Page No.
Computation of Income	18 – 20
Auditors Report along with the audited Financial Statements	21 – 40
Audit Report under section 44AB in Form No. 3CA & 3CD	41 – 50
Comparative position of Gross Profit & Net Profit margins	59
Month wise detail of various expenses	60 – 65
Detail of sundry creditors in excess of Rs. 1 lac	66
Month wise detail of Raw Milk Purchase	67
Month wise Consumption of Raw Milk & Other Ingredients	68
Month wise Production of Dairy Products	69
Month wise detail of Sales of various products	452 – 456
Copy of Annual VAT Return filed for the Financial Year 2012-13	457 – 463
Month wise detail of Sales to various parties	464 – 466
List of Trade Receivables in excess of Rs. 1 lac	467 – 468
List of Sundry Creditors	469
Copies of Gate Pass	470 – 512
Copies of Registration Certificates with various Authorities	526 – 599
Copy of Agreement with Barauni Dairy, Barauni	600 – 620

2.0 That it is respectfully submitted that sub-section (3) of Section 145 empowers the Assessing Officer to disregard the books of accounts and proceed to make a best judgment assessment under Section 144 only under any of the following three conditions:

- (i). Where he is not satisfied about the correctness or completeness of the accounts of the assessee;
- (ii). Where the assessee has not regularly employed the method of accounting (i.e., cash or mercantile system); or
- (iii). Where the assessee has not followed the accounting standards notified under Section 145(2).

The perusal of the assessment order clearly indicates that the learned AO did not point out any specific defect or deficiency in the appellant's books of account nor is there any material irregularity in the books that would prevent a true and fair view of the appellant's financial affairs. It is a settled position in law that the rejection of books under Section 145(3) must be based on specific and cogent material evidencing defects in the appellant's own books of account. In the present case, the Id. Assessing Officer has not brought on record any such material. Errors or irregularities, if any, in the books of third parties—namely, the appellant's buyers or suppliers—cannot form a valid basis for the rejection of the appellant's books. It is also settled that when the provision of section 145(3) is to be invoked the assessment is to be completed as per the manner provided in section 144 of the Act and proper opportunity is required to be given by pointing out the defects in the books of account which was not followed and thus the order is not correct.

2.1 The Hon'ble Rajasthan High Court in *CIT vs. Gotan Lime Khanij Udhyog (2001) 256 ITR 243 (Raj)* held that the books of account together with past history of the case as also material collected should be considered for estimation of income. The past history is the best guide where provisions of s. 145(3) of the Act are invoked as held in *Ajay Goyal vs. ITO (2006) 99 TTJ (Jd) 164*, *Madan Lal vs. ITO (2006) 99 TTJ (Jd) 538*, *CIT vs. Popular Electric Co. (P) Ltd. (1993) 203 ITR 630(Cal)* and *M.A. Rauf vs. CIT (1958) 33 ITR 843 (Pat)*. Once book results were rejected in terms of provisions of sec. 145(3) of the Act, it is not the ipse dixit of the AO to compute the income either u/s 144(1) or sec. 145(3) of the Act nor the computation and determination of income can be at the whims and fancies of the AO or the Id. CIT(A). Law on this point, i.e., law in respect of assessments made on the basis of best judgment or estimate is well-settled. Hon'ble Supreme Court in the case of **Commissioner of Sales Tax v. H. M. Esufali H. M. Abdulali [1973] 90 ITR 271 (SC)**, lays down the law as follows:

The distinction between a 'best judgment' assessment and assessment based on the accounts submitted by an assessee must be borne in mind. Sometimes there may be innocent or trivial mistakes in the accounts maintained by the assessee. There may be even certain unintended or unimportant omissions in those accounts; but yet the accounts may be accepted as genuine and substantially correct. In such cases, the assessments are made on the basis of the accounts maintained even though the assessing officer may add back to the accounts price of items that might have been omitted to be included in the accounts. In such a case, the assessment made is not a 'best judgment'

assessment. It is primarily made on the basis of the accounts maintained by the assessee. But, when the assessing officer comes to the conclusion that no reliance can be placed on the accounts maintained by the assessee, he proceeds to assess the assessee on the basis of his 'best judgment'. In doing so, he may take such assistance as the assessee's accounts may afford; he may also rely on other information gathered by him as well as the surrounding circumstances of the case. The assessments made on the basis of the assessee's accounts and those made on best judgment, basis are totally different types of assessments"

" In estimating any escaped turnover, it is inevitable that there is some guess-work. The assessing authority while making the 'best judgment' assessment, no doubt, should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his 'best judgment' and not of anyone else. The High Court could not substitute its 'best judgment' for that of the assessing authority. In the case of 'best judgment' assessments the courts will have to first see whether the accounts maintained by the assessee were rightly rejected as unreliable. If they come to the conclusion that they were rightly rejected, the next question that arises for consideration is whether the basis adopted in estimating the turnover has reason able nexus with the estimate made. If the basis adopted is held to be a relevant basis even though the courts may think that it is not the most appropriate basis, the estimate made by the assessing authority cannot be disturbed."

3.0 Reliance is placed on the following decisions.

Karnataka State Forest Industries Corporation Ltd., Vs. CIT (1993) 201 ITR 674 (Kar) held that the Assessing Officer's powers under the Section are not arbitrary and he must exercise his discretion and judgment judicially.

CIT Vs. Surjeet Singh Mahesh Kumar (1994) 210 ITR 83 (All) held that in every case of Best Judgement, the element of guess work cannot be eliminated so long as best judgement has a nexus with material on record and discretion in that behalf has not been exercised arbitrarily or capriciously. The Assessing Officer is not entitled to make a pure guess and make an assessment with reference to any evidence or any material at all. There must be something more than mere suspicion to support an assessment under Section 143(3) of the Act. **Dhakeswari Cotton Mills Ltd., v/s. CIT (1954) 26 ITR 775** wherein Hon'ble Apex Court held that AO cannot make any addition on the account of his guess work without having any material evidence on record.

CIT vs. J.J. Enterprises (2002) 122 Taxman 124 (SC) wherein the Hon'ble Supreme Court approving the decision of the lower authorities affirmed that the addition made on the basis of 'pure guess work' were unsustainable.

State of Orissa vs. Maharaja B.P. Singh Deo (1970) 76 ITR 690 (SC) wherein the Assistant Collector has not given no reasons for enhancing the assessment and his order does not disclose the basis on which he has enhanced the assessment. The Hon'ble Supreme Court held that the assessment must be based on some relevant material. It is not a power that can be exercised under the sweet will and pleasure of the concerned authorities.

Brij Bhushan Lal Parduman Kumar vs. CIT (1978) 115 ITR 524 (SC) wherein it was held that in the best judgment assessment an honest and fair estimate of the income should be made and the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case.

State of Kerala vs. C. Velukutty (1966) 60 ITR 239 (SC) it was held that though there is an element of guesswork in a 'best judgment assessment', it should not be a wild one, but should have a reasonable nexus to the available material and the circumstances of each case. Though the section provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard to the available material.

CIT vs. Om Overseas (2008) 173 Taxman 185 (P&H) it was held that the AO can't reject the book of accounts provided by the assessee without specifying proper adequate and sufficient reasons.

CIT vs. Vikram Plastics (1999) 239 ITR 161 (Guj.) it was found there was no discrepancy or defects in books of account maintained by assessee and further, the books of account maintained by assessee were not found to be incorrect or incomplete and that no material was brought on record by the revenue to prove that purchases and expenses had been inflated or sales had been suppressed.

PCIT v. Garden Silk Mills Ltd. [2017] 81 taxmann.com 128 (Gujarat) approving the decision of the lower authorities affirmed that the Assessing Officer had fully accepted the purchase, sales, consumption, shortage, etc., of the assessee-company and he could not pinpoint any specific item in the working results for a specific addition in the assessment as disallowable item of expenditure, etc. Therefore, the Tribunal was justified in holding that the book results were rejected by the Assessing Officer on insignificant grounds.

DCIT v. Hanuman Sugar (Khandsari) Mills (P.) Ltd. [2014] 221 Taxman 156 (Allahabad) the Hon'ble Allahabad High Court approving the decision of the lower authorities affirmed that, the assessee cannot be penalized, especially

when its books of account were properly audited and relevant vouchers were made available.

The Hon'ble Mumbai Tribunal, in the case of **ACIT v. ITD Cementation India Ltd. [2013] 36 taxmann.com 74 (Mumbai - Trib.)** held that, where books of account of assessee were audited and auditor had not given any adverse comments in maintenance of books of account or stock register, it was apparent that assessee had maintained proper books of account and Assessing Officer was wrong in rejecting same.

The Hon'ble Chandigarh Tribunal, in the case of **ACIT v. Maghan Paper Mills (P.) Ltd. [2018] 97 taxmann.com 281 (Chandigarh - Trib.)** held that, In the face of the complete quantitative information in connection with purchases, production and sales details available to the Assessing Officer who has not pointed out any defect with evidence in the audited books of account and there is no such finding of fact that the assessee has inflated the cost of raw material or cost of manufacturing or suppressed its sale prices order, or that it has made purchases of raw material or sale of finished goods outside the books. Since the quantum of production and turnover has been accepted, the rejection of books of account in the peculiar facts and circumstances has been held to be inapplicable and there is no good reason available on record on the basis of which the said conclusion can be varied.

Mayank kumar Natwarlal Soni v. ACIT, [2019] 111 taxmann.com 6 (Ahmedabad - Trib.), It was noted that Assessing Officer had rejected assessee's books of account without giving any specific details and cogent material which was in violation of principles of natural justice.

From the decisions referred to hereinabove, it is well established that (i) The power to make assessment on the basis of best judgment is not an arbitrary power. It is an assessment on the basis of best judgment of the officer ; (ii) when best judgment assessment is under-taken it cannot be as per the whims and fancies of the AO and it should base on some material either produced by the assessee or gathered by the taxing officer. If for any reason the material like books of account produced by the assessee is rejected as unreliable or unsatisfactory, there should be some valid reasons for doing so ; and (iii) whenever best judgment assessment is made, the court would not call for proof from the officer if there is some nexus between the amount arrived at after some guess work and the facts of the case.

- 4.0 It is further submitted that the learned AO has characterized the appellant's business as merely involving financial flows, implying that only book entries are being rotated without any real business activity. **Such a conclusion is wholly unfounded, especially when the Department has consistently accepted the assessee's business after detailed scrutiny in preceding years. The assessee is duly registered and assessed under Trade Tax Act not only in Uttar Pradesh but also in other states where it operates sales depots, including West Bengal, Rajasthan, Delhi,**

Chhattisgarh, Maharashtra, and Jharkhand. Substantial electricity consumption and direct diesel procurement from Indian Oil Refinery further substantiate active business operations. Additionally, the assessee has significant borrowings in the form of term loans and working capital, with regular factory inspections conducted by lending institutions. Hence, such an adverse conclusion reached by Assessing Officer on the basis of his fake presumption turns to a fiasco and not sustainable at all.

In view of the above, the invocation of Section 145(3) was erroneous, arbitrary, and not in accordance with the provisions of the Act. The assessment made on the basis of estimated profits, in absence of valid rejection of books, deserves to be quashed.”

6. On the other hand, learned DR brought to our notice, detailed findings of the Assessing Officer at para 4 of the assessment order and he submitted that the purchases and sales declared by the assessee are not genuine, the assessee has not established genuineness of the purchases and sales, which are carried out by the assessee within the close group of entities and accordingly, he supported the detailed findings of lower authorities.

7. Considered the rival submissions and material placed on record. We observe that Assessing Officer on verification of the book results declared by the assessee came to the conclusion that the profit declared by the assessee is not matching to other similar players in the market. He proceeded to investigate the other suppliers and customers with respect to purchases and sales of the assessee. It is brought on record that the assessee has a processing plant of milk products and assessee claims

huge expenditure and also depreciation. Assessing Officer rejected the books of account merely on the basis that the assessee has not given details of the parties like name of the vendor, addresses and PAN details. At the time of hearing, learned AR of the assessee brought to our notice the regular assessment completed in the cases of Jai Dairy, Vidhata Dairy, Kamal Dairy and Prashant Dairy. Merely because the Assessing Officer was not satisfied with the information submitted by the assessee, the Assessing Officer has rejected the books of account irrespective of the fact that there are huge commercial transactions declared by the assessee. Further, we observe that the Assessing Officer also sought directions from Addl. CIT, Range 2(2), who also observed that it would be inappropriate to reach the conclusion that the entire sales/purchases are merely financial term flows. Further he observed that actual production on the face of it and electricity consumption would corroborate the same. The above observations clearly indicate that there is actual production as well as electricity consumption, which demonstrate that the assessee has actually processed the above said milk and milk products. Keep that as it may, we observe that the assessee has declared its financial results over the period from assessment year 2011-12 to 2013-14, as per which, it has declared gross profit of 4.52%, 5.78% and 5.69% respectively and also declared

net profit of 0.37%, 0.40% and 0.41% respectively. We observe that the Assessing Officer proceeded to estimate the income of the assessee adopting net profit rate of 1% and observed that the comparative profits shown by the other players in the similar line of business is higher, which is **usually** in the range of 0.8% to 1.25%. In our considered view, the Assessing Officer has acted on his observation that the profit declared by others in the similar line of business is **usually** in the range of 0.8% to 1.25%, which clearly indicates that the Assessing Officer has not brought any cogent material on record to justify the basis of estimation @ 1%, comparing the similar companies in the same line of business. The adhoc estimation of income @ 1% without there being any corroborative comparison made by him shows that it is only the presumption. In our considered view, since the Assessing Officer has not carried out the proper comparison and it is only an assumption and conjecture, we are inclined to estimate the income based on past performances of the assessee. It is not the case of the lower authorities that the assessee is not a manufacturer of milk and milk products. It is continuous to declare similar results in the past. We observe that the assessee has declared its financial results as under :

A.Y.	Sales (Rs.)	GP (Rs)	G.P. Rate	NP(Rs.)	N.P.
2011-12	2,57,81,46,0	11,66,59,00	4.52%	95,36,000	0.37%
2012-13	2,43,12,66,0	14,04,74,00	5.78%	96,45,000	0.40%
2013-14	2,50,43,49,6	14,24,92,19	5.69%	1,01,55,7	0.41%

We observe that the average net profit declared by the assessee is about 0.4%. Since we are estimating the income, in our considered view and also for the sake of complete justice, it is fair to estimate the income at 0.50% of the total sales declared by the assessee in the year under consideration. The Assessing Officer is directed to estimate the income of assessee adopting the net profit rate of 0.50%.

9. In the result, the appeal preferred by the assessee is partly allowed.

Order pronounced in the open court on 29.12.2025.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

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

Dated: 29.12.2025

*aks/-

Copy forwarded to:

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

Asst. Registrar, ITAT, Agra