

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'C': NEW DELHI)
BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER,
ITA No:- 4978/Del/2025
(Assessment Year- 2014-15)**

Hansraj, C-75, Ground Floor, M2K County, Dharuhera Rewari, Haryana-123106.	Vs	Income Tax officer, Ward-1(4), Gurugram, Haryana-122001.
PAN- AAZPH7436E		
Assessee		Revenue

Assessee by	Shri K. Sampath, Adv. (Virtual) & Shri V. Raja Kumar, Adv.
Revenue by	Shri Om Prakash, Sr. Dr

Date of Hearing	21.01.2026
Date of Pronouncement	30.01.2026

ORDER

PER BRAJESH KUMAR SINGH, AM:

This appeal by the Assessee is directed against the order of the National Faceless Appeal Centre (NFAC), New Delhi, dated 06.06.2025 [hereinafter referred to as the 'Ld. CIT(A)'] arising out of the assessment order dated

29.03.2022 passed under Section 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') pertaining to Assessment Year (A.Y.) 2014-15.

2. Brief facts of the case : In this case, the assessee had not filed his return of income required u/s 139(1) for the assessment year 2014-15.

2.1 As per the information available with the Department under category NMS, it was found that the assessee had deposited cash/receipt contract/interest/payment made/purchase of immovable property during F.Y.2013-14 relevant to A.Y.2014-15.

<i>TDS-194D TDS-return-Insurance Commission (Section Rs. 41,234/-194D)</i>
<i>TDS- 1941(b) Rent Received (TDS Form 26Q, Section Rs. 6,66,672/- 1941(b)</i>
<i>AIR-001 Cash Deposit of Rs. 10,00,000/- or more in a Rs. 1,01,50,000/- saving bank account</i>

2.2 In view of the above facts, the Assessing Officer had reasons to believe that income to the extent of Rs. 1,08,57,906/- had escaped assessment within the meaning of section 147 of the Act and, the case for A.Y. - 2015-16 was re-opened by issuing of notice u/s.148 dated 30.03.2021 after recording of reasons for reopening obtaining prior approval of the PCIT, Faridabad on 28.03.2021. The assessee was required to furnish his return of income within 30 days from the receipt of notice issued u/s. 148 of the Act.

3. During assessment proceedings, the assessee submitted his reply on 29.12.2021 stated that " dear sir, due to my older accounts in bank closed, banks are taking so much time and not giving account therefor taking time. please give some more time I am collecting all detail". Further, the assessee submitted reply on 12.01.2021 and stated that "*sir bank account copy I have taken. my note-book for that year also found. it was total loss year. I am consulting tax adviser. Please give time of 5 days more*".

4. In response to the notice, the assessee submitted his reply on 22.02.2022 alongwith details. On perusal of the reply, the AO noted that assessee was engaged in the trading business of milk of buffaloes, cows and she-goats. The assessee also stated that he used to purchase milk from several parties/houses and used to sell it door to door and to sweet manufacturers. The assessee also submitted his cash book alongwith month wise sale / purchase details. The assessee also submitted that the source of cash deposit was from his milk trading business and was as per cash book which may please be verified.

5. The submission of the assessee was considered by the AO but was not found to acceptable because the assessee was trading in milk business but the assessee did not file his return of income u/s 139(1) of the Act and only during the course of re-assessment proceedings, the assessee has submitted the details for name and address of the person from whom the assessee had purchased the milk for 40

persons without any supporting evidences/confirmation from the milk sellers and also did not submit any supporting evidences for sale of milk. The AO noted that assessee had submitted month-wise summary for purchases and sale of milk and cash book for the F.Y.2013-14, but in absence of any supporting evidences/confirmation, bills/vouchers for purchases and sales of milk, the cash deposits deposited in the Bank account remained unverifiable. The AO further noted that moreover, on pursuing the bank account it was seen that it was a saving bank account and also the cash deposited by the assessee did not look like a business transaction.

6. Thereafter, a show cause notice was issued to the assessee on 16.03.2022 and, the assessee was given an opportunity to show cause as to why proposed variation should not be made and the assessment should not be completed accordingly. The assessee was asked to submit his response through registered e-filing account at www.incometax.gov.in by 22.03.2022.

7. The AO noted the submission of the assessee vide reply dated 19.03.2022 and 23.03.2022 but did not accept it for the reasons as stated earlier that the assessee failed to furnish any supporting evidences/confirmation for purchase and sale of milk, and in absence of any supporting evidences/confirmation the cash deposits deposited in the saving bank account maintained with Sarva Haryana Gramin Bank Account No.21013002735 was not verifiable. Accordingly, the

amount of Rs.1,01,50,000/- was treated as unexplained money u/s.69A of the Act and added to the total income of the assessee and tax payable on this addition was computed as per the provisions of section 115BBE of the Act.

8. Aggrieved with the said order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) noted that the assessee's turnover was Rs. 1,94,67,899/- but no Audit Report was filed in time and also no return of income was filed by the assessee. The Ld. CIT(A) doubted the veracity of the Auditor certifying the loss to tune of Rs. 4,23,729/- on the aforesaid turnover in Audit Report dated 15.12.2024. The Ld. CIT(A) also did not accept the evidences filed before him on the ground that the same were not furnished before the AO and the assessee also failed to explain as to what prevented the assessee in producing it before the AO. The Ld. CIT(A) after considering the various submissions of the assessee and for the reasons as stated in para no. 5.8 of his order estimated the income of the assessee @ of 20% of the gross receipt of Rs. 1,94,67,899/- by rejecting the books of accounts and directed the AO to compute the income accordingly. The para no. 5.8 of the Ld. CIT(A) is reproduced as under:

“ 5.8 The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known latin dictum, "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT". The conduct of the Appellant, as inferred from the aforesaid facts, evidences that the Appellant fails on this principle of equity. Even the Hon'ble Courts, in various pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals. On perusal of the Balance Sheet it appears that the appellant has also not shown any withdrawal in the year under consideration. The value of current Asset balance show that Rs.93,55,372/- is available in the hands of

the appellant in the balance sheet as at 31.03.2014. Against this current assets the appellant has liability for expenses and creditors to the tune of Rs. 12,15,418/- only. Balance Sheet as at 31.03.2013 for the financial year 2012-13 has also not been furnished suomotto along with the return of income for the A.Y: 2013-14 or in the course of re-assessment for the year under consideration. Having regard to the facts of the case and totality of the matter it would be fair and also in the interest of justice to estimate the total income from the head Business at the rate of 20% of gross receipts of Rs.1,94,67,899/-, by rejecting the books of accounts. The AO is directed to recompute the total income in terms of direction given above. The income from other "heads of income" like housed property, other source etc., will remain unaltered in effect of this order. The appeal is partly allowed in terms observation made above."

9. Aggrieved with the said order, the assessee is in appeal before us, on the following grounds of appeal:

"On the facts and in the circumstances of the case and in law the Ld. NFAC/CIT(A) erred in confirming the following actions of the Assessing Officer

- i. initiating proceedings u/s 147/148 of the Act without there being any valid reason leading to belief of escapement of income;*
- ii. rejecting audited books of account even without verifying them;*

2. confirming addition of Rs. 38.93,580/- on ad hoc basis being 20% of the gross turnover of Rs. 1,94,67,899/-;

The above actions being arbitrary, fallacious, unwarranted and illegal must be quashed with directions for appropriate relief."

10. During the course of hearing before us, the assessee filed a written submission and requested that the matter may be remitted to the file of the AO for fresh adjudication as per facts and law. The written submission filed by the assessee is reproduced as under:

"Noticing qua an 'information' received that the Appellant in this case had not filed any return of income u/s. 139(1) of the Income Tax Act, 1961 (the Act); and further with a nature of the business activity of the Assessee being uncertainable in the absence of a

return; and further with information available to it under Category NMS indicating that the Assessee had inter alia deposited cash of Rs. 1,01,50,000/- in the bank account, the AO thereafter recorded reasons to believe that income to the extent of Rs. 1.08.57.906/- had escaped assessment within the meaning of Sec. 147 of the Act, and after the recording of reasons for the satisfaction of escapement of income and after approval by PCIT, Faridabad u/s. 151 of the Act the notice for reassessment u/s. 148 of the Act dated 30.03.2021 was issued to the Assessee. The Assessee submitted a return and sought the reasons for the reopening of the case.

2 In response to notices for assessment, the Appellant had replied that he was engaged in the trading business of milk of buffaloes and cows and she-goats and that he used to purchase from several parties/houses and was selling milk door to door and also to sweets manufacturers. The AO perused the same and after raising various queries to satisfy himself about the authenticity of the claim of the Assessee as recorded in para 11 of the assessment order on pages 6 and 7, that the deposit of Rs. 1.01,50,000/- had to be treated as unexplained income u/s. 69A of the Act and which had to be taxed as per the provisions of Sec. 115BBE of the Act..

3. In the appeal before the Ld. CIT(A) (NFAC) the Assessee filed the details regarding business turnover from milk of Rs. 1.94.67.899/- and pleaded that the assessment be completed on the basis of such disclosure at the loss to the extent of Rs. 4.23.729/- suffered by him.

4 The Ld. CIT(A) in the interest of justice and fair play assessed the total income from the head Business @ 20% of the gross proceeds of Rs. 1.94.67.899/- after rejecting the books of accounts. Paras 5.5 to 5.8 of the order of the Ld. CIT(A) explain in detail the reasonings and findings of the Ld. CIT(A).

5. It is pleaded most respectfully that the order of the Ld. CIT(A), though providing partial relief, is not in accordance with the law. The commission from LIC of Rs. 41.234/- and the rent earned from buildings in a sum of Rs. 6.66.672/- could not be assessed as 'Business income. Further the gross profit assessed 20% on the sale of milk on gross proceeds of Rs. 1,94,67,899/- after rejecting the books of accounts is arbitrary, erroneous and untenable.

The gross profit on sale of milk in retail as indicated by the Assessee ought to be taken as per the accounts submitted by him. The accounts show a loss of Rs. 4.23.729/-: That the AO has brushed aside without assigning any cogent reason. Further the gross profit on sale of milk retail as per the material available on the computer site varies between 2% to 5% It can never be 20% considering these spillages, putrefaction and other wastages. Those aspects have been completely ignored. Still further, the Income Tax Appellate Tribunal, Agra Bench in ITA No. 342/Agr/2025 for the AY 2013-14 has taken net profit at around 0.5% as reasonable.

The Assessee, therefore, pleads for a comprehensive view being taken on a holistic basis and for a drastic reduction in the GP rate. Further the income from LIC commission and

rent would have to be assessed under the prescribed Sections of the Act. failing which the matter could be remitted back to the AO for a fresh appraisal as per facts and law and specific directions.

Placed for the most favourable consideration.”

(emphasis supplied by us)

11. The Ld. Sr. DR supported the order of the Ld. CIT(A) but did not seriously object to the plea of the assessee for reasonable estimation of gross profit or in the alternative setting aside the matter to the file of the AO for fresh adjudication.

12. We have heard the rival contentions and perused the material available on record. No specific submissions were made in respect of Ground no. 1(i) challenging the initiation of proceedings u/s 147 of the Act. Further, in the given facts of the case, we are of the considered view that the notice issued u/s 148 of the Act dated 30.03.2021 was validly issued. Hence, ground no. 1(i) is dismissed.

12.1 On merits, the Ld. AR submitted that the assessee had filed additional evidences and the audited books of account before the Ld. CIT(A), which was not accepted by the Ld. CIT(A). The grievance of the assessee is that the Ld. CIT(A) rejected the books of account of the assessee without verifying the audited books and the evidences filed before the Ld. CIT(A). Further, we also note that the assessee in its written submission in para no. 5 as highlighted above submitted that the gross profit on sale of milk retail as per the material available on the computer site varies between 2% to 5% and it can never be 20% considering these spillages, putrefaction and other wastages which have been completely ignored by the Ld.

CIT(A). The Ld. AR further relied upon the order of the Income Tax Appellate Tribunal, Agra Bench in ITA No. 342/Agr/2025 for the AY 2013-14 which had taken net profit at around 0.5% as reasonable.

12.2 The plea of the assessee has been carefully examined. In the given facts of the case, a reasonable estimate of the gross profit of the milk business would meet the end of justice. The plea of the assessee relying upon the above decision to estimate net profit @ 0.5% will be too low in the given facts of the case. Therefore, considering the totality of facts of this case, we estimate the gross profit of the milk business of the assessee @ 5% of the gross receipts of Rs. 1,94,67,899/- as declared by the assessee in its audited accounts and the Assessing Officer is directed to compute the net profit after allowing eligible deduction as per law. Ground nos. 1(ii) and 2 of the appeals are partly allowed.

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

Order pronounced in the Open Court on 30.01.2026

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Dated: 30 /01/2026.

Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

1	Date of dictation of Tribunal order	27.01.2026
2.	Date on which typed draft order is placed before the dictating Member	28.01.2026
3	Date on which typed draft order is placed before the other Member (in the case of DB)	
4.	Date on which the approved draft order comes to P.S/Sr.P.S	
5.	Date on which the fair Order is placed before the dictating Member for sign	
6.	Date on which the fair Order is placed before the other Member for sign (in the case of DB)	
7.	Date on which the Order comes back to P.S./Sr.P.S for uploading on ITAT website	
8.	Date of uploading, if not, reason for not uploading	
9.	Date on which the file goes to the Bench Clerk	
10.	Date on which order goes for xerox	
11.	Date on which order goes for endorsement	
12.	Date on which the file goes to the Superintendent/O.S. for checking	
13.	Date on which the file goes to the Assistant Registrar for signature on the order	
14.	Date on which the file goes to dispatch section for dispatch the Tribunal Order	
15.	Date of dispatch of order	
16.	Date on which file goes to Record Room after dispatch the order	