

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI

Before Shri P K Bansal, VP & Shri Ravish Sood, JM

ITA No. 3203/Mum/2014  
Assessment Year : 2008-09

Shri Krishna Dadu Patil, Prop M S Sharda Dudh Centre, Behind Jarimari Temple, Gokul Nakag, Old Agra Road, Thane (W), Thane 400 601 <b>PAN ABUPP9848C</b>	Vs.	ACIT Circle 1, Thane
(Appellant)		(Respondent)

Appellant By : Shri Subodh Ratnapalkhi  
Respondent By : Shri Rajesh Kumar Yadav

Date of Hearing :04.05.2017	Date of Pronouncement : 05.05.2017
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**ORDER**

**Per P K Bansal, Vice-President:**

The only issue involved in this appeal filed against the order of CIT(A), dated 10.02.2014, is sustenance of addition of Rs.12,70,600/- by the CIT(A) claimed by the assessee on account of day to day handling of distribution loss of milk in the proprietary business of dealing in packaged milk.

2. At the outset, the Registry has pointed out that there is a delay of one day in filing of appeal. The assessee vide his letter dated 24<sup>th</sup> June 2014, has informed that it was due to negligence on the part of his employees, which has resulted in the delay. We condone the delay of one day and proceed to

dispose of the appeal after hearing the parties and on the basis of material available on record.

2. After hearing the rival submissions and going through the orders of the tax authorities below, we noted that the AO found on the basis of item no. 28A Form 3CD that the assessee has claimed handling/distribution loss of 81,780 litres of milk on total sales of 1,20,91,781 litres, which comes to 0.68% and 225 litres per day. The assessee is dealing in wholesale poly pack milk, which is delivered in crates. Therefore, the AO was of the view that the loss claimed by the assessee was on the higher side. He therefore disallowed a sum of Rs.16,35,600/- When the matter went before the CIT(A), the CIT(A) reduced the loss of Rs.12,70,600/-.

3. In our opinion, the nature of assessee's business demands such loss to be incurred. He noted that in the preceding assessment years 2005-06 to 2007-08 and assessment year 2009-10, assessee has incurred similar loss to the extent of 0.68%. In the A.Y 2005-06 such type of loss was duly allowed. While in the A.Y 2009-10, the AO disallowed 20% of such loss. Assessment for AY 2005-06 was completed u/s. 143(3), since the nature of the business demands such losses to be incurred and the percentage of loss incurred by the assessee is consistent as compared to the earlier and subsequent years. We, therefore set aside the order of the CIT(A) and allow the ground raised by the assessee.

4. In the result, the appeal is allowed.

Order pronounced in the open court on 5<sup>th</sup> day of May, 2017.

Sd/-  
(Ravish Sood)  
**JUDICIAL MEMBER**

Sd/-  
(P K Bansal)  
**VICE-PRESIDENT**

Mumbai; Dated: 5<sup>th</sup> May, 2017

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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai
4. The CIT
5. DR, 'A' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai