

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 2179/DEL/2022 [A.Y. 2018-19]

The Dy. C.I.T
Central Circle - 4
New Delhi

Vs. M/s Creamy Foods Ltd
A-15, SMC House, Sector 136
Near Panchsheel College
Greater Noida, U.P

PAN: AABCC 7375 A

ITA No. 1911/DEL/2022 [A.Y. 2018-19]

M/s Creamy Foods Ltd
A-15, SMC House, Sector 136
Near Panchsheel College
Greater Noida, U.P

Vs. The Dy. C.I.T
Central Circle - 04
New Delhi

PAN: AABCC 7375 A

(Applicant)

(Respondent)

Assessee By : Shri Salil Aggarwal, Sr. Adv
Shri Shailesh Gupta, CA
Shri Madhur Aggarwal, Adv

Department By : Shri T. James Singson, CIT-DR

Date of Hearing : 04.12.2023
Date of Pronouncement : 06.12.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned cross appeals by the Revenue and the assessee are preferred against the order of the Id. CIT(A) - 23, New Delhi dated 24.06.2022 pertaining to Assessment Year 2018-19.

2. Since the underlying facts are common in the cross appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance relates to the addition on account of unexplained cash found during the course of search and seizure operation carried out in the SMC group of cases on 21.11.2017.

4. Briefly stated, the facts of the case are that during the course of search and seizure operation, cash amounting to Rs. 2,65,31,500/- was found from the premises at (i) E-13/29, Harsha Bhawan, Connaught Place, New Delhi Including Noida Office and its plant, out of which cash of Rs. 2,09,99,150/- was seized, which can be understood from the following chart:

1	Creamy Foods Ltd. E-13/29, Harsha Bhawan, Connaught Place, New Delhi	Cash	2,26,70,000/-	2,00,00,000/-
2	Creamy Foods Ltd., Plant	Cash	32,90,000/-	9,99,150/-
3	Creamy Foods Ltd., Noida Office	Cash	5,71,500/-	Nil
Total			2,65,31,500/-	2,09,99,150/-

*Legal office of
SMC foods*

5. The assessee was asked to explain the availability of cash found from the premises as mentioned above. Statement of the Accountant, Shri Pradeep Mishra was also recorded, who failed to explain and reconcile the cash found with the cashbook. The Assessing Officer was left with no choice but to treat the cash of Rs. 2,65,31,500/- as unexplained money and added the same u/s 69A of the Act.

6. The assessee agitated the matter before the Id. CIT(A) and explained that cash found during the course of search belonged to various companies/concerns of SMC group and cash so found was available in cash book of the companies/concern of SMC group. Necessary details alongwith cash account of respective companies/concern of SMC group were furnished to the CIT(A). It was explained that cash found was not segregated at the time of search.

7. After considering the facts and submissions and after verifying the availability of cash with different companies/concern of the SMC group, the ld. CIT(A) observed that the sole ground for making addition by the Assessing Officer on account of unexplained cash is that Shri Pradeep Mishra, Accountant could not explain the entire cash found.

8. The ld. CIT(A) was convinced that there were other concerns also operating from the same premises and cash balance in those concerns as on the date of search was not taken into account while making the addition.

9. It was also explained that cash of Rs. 5,71,500/- found from the premises at A - 15, Sector - 136, Noida does not belong to the assessee but to a group concern SMC Foods Ltd. Details of availability of cash with different concerns of the group were furnished along with the assessment order in the respective cases.

10. After verification, the ld. CIT(A), observed that Triaksh Education Pvt Ltd and Bharat Bhushan Infratech Pvt Ltd do not operate from the same premises and, therefore, cash of Rs. 2,38,786/- and Rs. 6,476/- respectively belonging to these two concerns cannot be considered as

cash found from the premises belonging to the group concerns and directed the Assessing Officer to sustain the addition to the extent of Rs. 12,79,368/- and deleted the balance for which both the revenue and the assessee are in appeal before us.

11. Representatives of both the sides were heard at length. Case records carefully perused.

12. It is the say of the ld. DR that the assessee furnished the statement of cash available with the group companies and individuals only before the ld. CIT(A) and the ld. CIT(A) simply accepted the submissions of the assessee without calling for any remand report from the Assessing Officer. The ld. DR stated that these documents need verification and, therefore, the issue may be restored to the file of the Assessing Officer.

13. The ld counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the ld. counsel for the assessee that the very same Assessing Officer assessed the nine group concerns/companies and accepted the availability of cash in hand in the respective books of accounts. Therefore, it would be a futile

exercise to remit the matter to the file of the Assessing Officer for verification of availability of cash, which has also been verified by the Assessing Officer at the time of framing the respective assessment orders.

14. We have carefully perused the orders of the authorities below. The cash in hand, as per the books of account on the date of search of the group concerns can be understood from the following chart:

Cash in hand as per books on the date of search i.e., as on 20.11.2017

Sr. No.	Party Name	Cash Balance (Rs.)
1	SMC Power Generation Ltd.	20,97,316
2	Creamy Foods Ltd. (Delhi)	41,43,294
3	Maruti Trading Company (Prop. Shri Mool Chand Aggarwal)	26,69,548
4	Hanuman Trading Co.	72,53,172
5	Balaji Trading Co.	66,77,568
6	Triaksh Education Pvt. Ltd.	2,38,786
7	Bharat Bhushan Infratech Pvt. Ltd.	6,476
8	SMC Television Pvt. Ltd.	11,680
9	Creamy Foods Ltd. (Khurja)	35,56,558
		2,66,54,398

15. From the above, cash belonging to Triaksh Education Pvt Ltd and Bharat Bhushan Infratech Pvt Ltd. cannot be considered to be found from the same premises, as these premises do not function/operate from the same premises. Therefore, availability of cash to the extent of Rs. 2,45,262/- cannot be considered in the hands of the assessee. Therefore, to this extent, we have no hesitation to sustain the

addition, though the ld. CIT(A) has sustained the addition to the extent of Rs. 12,79,368/-, which on the facts of the case, we direct the Assessing Officer to restrict to Rs. 2,45,262/-.

16. As a result, appeal of the assessee is, accordingly, partly allowed.

17. Out of the total availability of cash in the hands of the group concerns, if the addition, as mentioned hereinabove is reduced, total cash available comes to Rs. 2,64,09,136/- and the Assessing Officer has made addition of Rs. 2,65,31,500/- which leaves a deficit of Rs. 1,22,364/-. But at the same time, we cannot ignore the fact that Rs. 5,71,500/- belongs to SMC Foods accepted by the Assessing Officer. Therefore, the availability of cash with the different companies/concerns is sufficient to explain the cash found at the time of search. Therefore, we do not find any reason to interfere with the findings of the ld. CIT(A).

18. As a result, appeal of the revenue is dismissed.

19. Before parting, the contention of the ld. DR that the issue may be restored to the file of the Assessing Officer, we do not find any merit in this contention of the ld. DR as details/documents were also before the Assessing Officer during the course of assessment proceedings and moreover, all the nine group companies were assessed by the same Assessing Officer who accepted the cash in hand of all the group concerns in their respective assessments. Therefore, we do not find it necessary/logical to remit the matter for verification of the same facts which have already been verified by the Assessing Officer.

20. In the result, the appeal of the assessee in ITA No. 1911/DEL/2022 is partly allowed whereas the appeal of the Revenue in ITA Nos. 2197/DEL/2022 is dismissed.

The order is pronounced in the open court on 06.12.2023 in the presence of both the rival representatives.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 06th DECEMBER, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	