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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 50/2022

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr.Sanjay Kumar and Ms.Esha  
Kadian, Standing Counsels for  
Income Tax Department.

versus

PARAM DAIRY LTD.

..... Respondent

Through:

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Date of Decision: 15<sup>th</sup> March, 2022

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

### **J U D G M E N T**

**DINESH KUMAR SHARMA,J (Oral):**

1. The Principal Commissioner of Income Tax (Central)-2, C.R. Building, New Delhi – 110002 has challenged the order dated 03.12.2020 of the Income Tax Appellate Tribunal, Delhi Bench “F” New Delhi passed in I.T.A.Nos.3993 & 3994/DEL/2019 pertaining to Assessment Years 2013-2014 & 2014-15.
2. The Income Tax Appellate Tribunal vide the impugned order has *inter alia* deleted the addition of the sum amounting to Rs.23,03,77,859/- made by the Assessing Officer and sustained by the CIT(A).The Principal Commissioner of Income Tax in the present appeal has challenged this finding of the Income Tax Appellate Tribunal on

the ground that the ITAT was not justified in deleting the addition of Rs.23,03,77,859/- made by the Assessing Officer under Section 69C read with Section 40A (3) of the Income Tax Act, 1961 on account of bogus purchase of “Tanki Milk” purchase. The appellant has also assailed the impugned order on the ground that ITAT was not justified in law in allowing relief to the assessee overlooking the fact that the purchases shown under the head “Milk Purchase Tanki” were made through the traders (other than farmers) in cash which was not covered under Rule 6DD of Income Tax Rules, 1962 read with Section 40A (3) of the Act.

3. In brief, the facts are that a search and seizure action was carried out on Rama and Param Group of companies on 28.02.2014 at various premises. The assessee is manufacturer and exporter of Milk and Milk products i.e. Skimmed Milk Powder, Full Cream Milk Powder, Dairy Whitener, Milk Fact, Paneer etc. During the course of assessment on the basis of seized documents, the Assessing Officer noticed that the assessee had made huge cash purchases from traders (other than farmers) under the head "Milk Purchase Tanki" and such purchases amounting to Rs.23,03,77,859/- in violation of Section 40A(3) of the Act.
4. Learned counsel for the appellant has stated that since the assessing officer failed to furnish the identity and addresses of such Tanki traders, the Assessing Officer rightly held that the genuineness of such purchase parties remained unverifiable at the

same time by such purchases in cash (in excess of Rs.20,000/-). Thus, the assessee violated the provisions of Section 40A(3) of the Act read with Rule 6DD of the Income Tax Rules, 1962 and therefore the assessing officer made an addition of 23,03,77,859/- as a bogus purchase under Section 69C of the Act along with provisions of Section 40A(3) of the Act.

5. Mr.Sanjay Kumar learned counsel for the appellant stated that the CIT (A) in the appeal found the order of the Assessing Officer based on material and information gathered during the search, as well in consonance with the judgment of this Court in the case of *CIT (C)- III Vs. Kabul Chawla* (2015) 61 taxmann.com 412 (Delhi). It was argued that the ITAT has wrongly deleted the addition on the ground that total purchases including Milk Tanki Purchases have been duly reflected in the books of account and a common entry of purchases in the books of account have been made to avoid multiple of hundreds of ledgers. Learned counsel also assailed the order of ITAT on the ground that ITAT has not appreciated the evidence correctly and the order suffers from perversity. It has been stated that the onus has wrongly been shifted upon the department to prove the genuineness of the transaction. Learned counsel for the appellant has submitted that the rates given to Milk Tanki Purchase were significantly lower than the rates for regular purchase of milk by the assessee and the conduct of assessee in making huge purchases

from the vendors making so-called Tanki Milk Supplies in cash is not justifiable.

6. In the backdrop, the initial assessment order was passed on 29.12.2017 by the Assistant Commissioner of Income Tax. In his order, the assessing officer has *inter alia* held that the assessee had failed to provide the contact number of farmers and therefore it was not feasible to verify, whether the purchases under the different heads of the ledger in which milk is being done from farmers only. The assessing officer concluded that the purchases under the head 'Milk Purchase Tanki' is being made in cash and that too from the traders and not from farmers which is gross violation of Section 40A(3) of the Act, 1961. The assessee challenged this order before the CIT (A).

CIT (A) in its order dated 19.03.2019 *inter alia* held that the assessee could not properly establish the bonafides of the purported purchases by either producing the suppliers with proper supporting evidence or establish the supply of milk in the manner as specified by the appellant during the course of scrutiny proceedings or even during the search. The CIT (A) held that the addition made by the assessing officer under Section 69C of the Act was correct.

7. The assessee challenged the order before the ITAT. The ITAT after considering the entire material on record and submissions of the parties, *inter alia*, held that the purchases under the head

“tanki” have been duly recorded in the books of account and is reflected in the audited financial statements. The total purchases including Milk Tanki purchases have been debited to the profit and loss account and the entire source of purchases are duly recorded in the books of account thus source of such purchase/expenditure stands established as having been incurred out of the funds shown in the books of account. ITAT further held that therefore at the threshold, addition under Section 69C cannot be resorted to. The ITAT further *inter alia* held that the nature of business of the assessee and *modus operandi* for milk tanki purchases has to be understood. The ITAT noted that since the purchase of such a huge quantity of milk is from a large number of farmers and individuals, it is very difficult to make an individual account of each and every farmer who comes from nearby villages with their milk production to the assessee's factories to sell their milk.

8. The tribunal acknowledged the fact that the assessee keeps the records of the person/farmer of each village who collects all the milk and send the same to the assessee's factory and common entry of purchase in the books of account is made in order to avoid multiple of hundreds of ledgers. The tribunal has also noted in the order that the assessee duly maintains other records i.e. when the milk is received at the factory gate, its weight/ quantity is taken and is then tested for quality; a quality slip is generated which

contains the details of the milk including gross weight/ net weight, temperature, test, acidity contents, etc. The purchase invoices are also duly generated based on the weight and quality brought by the farmers and then payment is released to the farmers substantially in cash for which detailed reasons have been given. The tribunal noted that the quantity of purchase of the milk procured is again put to laboratory testing and there are test reports which are then sent for processing and are entered in the process. The assessee also duly maintains the stock register, sale register and the assessee had duly filed the supporting documents.

9. Before proceeding further, it is necessary to examine the scope of 260A of the Act. Section 260A of the Act provides for an appeal to the High Court against a decision of ITAT. Sub-Section (1) of Section 260A of the Act provides for an appeal against the order of the Tribunal only on a substantial question of law. In a judgment delivered by this Court in which, one of us (Manmohan, J.) was presiding reported as 2021 SCC Online Delhi 4430 ***Principal Commissioner of Income Tax vs. Bhadani Financiers Pvt. Ltd*** it was *inter alia* held as under :

*8. Substantial” means “having substance, essential, real, of sound worth, important or considerable.” To be “substantial”, a question of law must be debatable, not previously settled. The Supreme Court and several High Courts have held that a substantial question of law is involved if it directly or indirectly affects substantial rights of the parties or it is of general public importance, it is an open question in the sense that the issue has not been settled by a pronouncement of the Court or it is not free from difficulty or it calls for a discussion for alternate views. A High Court under Section 260A of the Act has*

*limited jurisdiction to interfere with findings of fact recorded by the Tribunal. If findings of Tribunal are irrational, perverse or unreasonable, then only interference of the court would be justified. It would also be justified if a finding of fact is arrived at by the Tribunal without any evidence. Section 260A is akin to Section 100 of the CPC, 1908.[See: Sampath Iyengar's Law of Income Tax].*

10. In the judgment of **Goodyear India Ltd. v CIT** 2000 SCC OnLine Del 1023, this Court has held as under:

*8. As indicated above, the scope of an appeal under section 260A is restricted to substantial questions of law. The expression "substantial question of law" has not been defined anywhere in the statute. But it has acquired a definite connotation through various judicial pronouncements. In Sir Chunilal V. Mehta and Sons Ltd. v. Century Spinning and Mfg. Co. Ltd., AIR 1962 SC 1314, the apex court laid down the following tests to determine whether a substantial question of law is involved. The tests are (i) whether directly or indirectly it affects substantial right of the parties, or, (ii) the question is of general public importance, or (iii) whether it is an open question in the sense that issue is not settled by the Federal Court, Privy Council or the Supreme Court, or, (iv) the issue is not free from difficulty, and (v) it calls for a discussion for alternative view. There is no scope for interference by the High Court on a finding recorded when such finding could be treated to be a finding of fact. A finding of fact must, therefore, be held to have become final.*

11. We have gone through the record and considered the submissions of the learned counsel for the appellant. A bare perusal of Section 260A of the Income Tax Act makes it clear that the appeal is permissible in the High Court only if there involves a substantial question of law. The necessary corollary of Section 260A would be that the Income Tax Appellate Tribunal is the final arbiter of facts. The appeal before the High Court would be entertained only if it involves a substantial question of law. The object and purpose of establishing the ITAT would be defeated if the facts are agitated

before the High Court also. The order of ITAT can be upset only if there is any perversity in the order of ITAT. The reading of the order of ITAT does not reveal any perversity or manifest error. We consider that the ITAT has returned the findings of facts based on the material on record. Thus, there is no substance in the appeal. Hence, the same is dismissed.

**DINESH KUMAR SHARMA, J**

**MANMOHAN, J**

**MARCH 15, 2022**

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