

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 402/Mum/2020
(निर्धारणवर्ष / Assessment Year: 2013-14)

Vithal Baban Bangar, AI-05/13/01 Pancharatna Apartment, Section 16, Airoli, Navi Mumbai – 400 708.	बनाम/ Vs.	ITO – 28(3)(4), R. No. 320, 3 rd floor, Tower no. 6, Vashi Railway Station Building Complex, Vashi, Navi Mumbai-400 703
स्थायीलेखासं./जीआइआरसं./PAN No. AISPB4110G		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Himanshu Gandhi, AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Mrs. Samatha Mullamudi, DR

सुनवाईकीतारीख/ Date of Hearing	:	18.02.2020
घोषणाकीतारीख / Date of Pronouncement	:	06.03.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-26, Mumbai, in short ‘Ld. CIT(A)’ dated 15.11.19 for AY 2013-14.

2. The brief facts of the case are that assessee is a proprietor of M/s Shree Krishna Milk Agency and a wholesale milk supplier. Assessee filed its return of income for the year under consideration on 01.07.14 declaring a total income of Rs. 4,91,830/- and return was processed u/s 143(1) of the I.T. Act. Thereafter the case was selected for scrutiny and notices u/s 143(2) and 142(1) were served upon the assessee. In response, AR of the assessee attended and furnished the details as called from time to time.

3. During the assessment proceeding, AO observed that assessee has disclosed the total sales at Rs. 1,75,82,560/- and the relevant purchases at Rs. 1,56,66,543 and net profit at Rs. 7,10,280/-. He further observed that AIR information was available on record which shows that assessee has deposited cash of Rs. 57,71,930/- in his saving banks. On further enquiry, considering the copy of bank statements submitted by the assessee, assessee has filed a revised profit and loss account and balance sheet and disclosed sales at Rs. 4,69,59,695/- and purchase at Rs. 4,50,43,678/-. AO further observed that in the original profit and loss account submitted by the assessee,

assessee has declared a gross profit of Rs. 19,49,172/-, it is equivalent to 11.08% of sales, whereas assessee has retained the same net profit and inserted the modified sales and purchases in the revised profit and loss account. As per the revised profit and loss account, the assessee has disclosed GP of only 4.15% of sales. On enquiry, assessee in his reply explained that he is receiving only commission Rs. 1 per liter (approx.) on sale of 1 liter of milk at Rs. 37. He submitted that the profit declared by the assessee is in consonance with the commission income earned by the assessee. As per the working submitted by the assessee based on the commission income, assessee declared the margin of 2.63% instead of 11.08% declared in the original return of income. Accordingly, AO rejected the contentions and submissions of the assessee and estimated the GP @ 15%.

4. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submissions of the assessee, accepted the findings of AO for rejecting the book results, however Ld. CIT(A) reduced the estimation of GP @ 11% instead of 15% as per the same rate as disclosed by the assessee in its original return of income.

5. Now before us, the assessee has preferred the appeal against the order of Ld. CIT(A) on the grounds mentioned below:-

1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming rejection of books of account u/s 145(3) of Income Tax Act, 1961.

2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming suppress gross profit margin @11% which is abnormally high and against the prevailing GP rate in milk distribution business and required to be reduced.

3. Assessee craves leave to reserve right to add to, alter or amend any of the aforesaid grounds of appeal at or before the time of hearing and to produce such further evidence, documents and papers in support of claim.

6. At the time of hearing, Ld. AR submitted that assessee is not pressing Ground No. 1 and Ground No. 3 is general in nature, accordingly, Ground No. 1 & 3 are dismissed. With regard to Ground no. 2, Ld. AR submitted that assessee is aggrieved with estimation of GP @ 11%. In this respect, Ld. AR brought to our notice the facts of the case and registration certificate to carry on

business of milk supply. He brought to our notice revised profit and loss account and prayed that the results of the revised profit and loss account should be accepted considering the commission income earned by the assessee on sale of milk and he also submitted the details of commission earned by the assessee during this year, which is reproduced below:-

<i>Company</i>	<i>Product</i>	<i>Distributor Rate</i>	<i>Comm. Of Dist</i>	<i>Rate for Retailer</i>	<i>Comm. Of Retailer</i>	<i>Customer Rate</i>
<i>Warna</i>	<i>Buffalo Milk</i>	<i>38.45</i>	<i>1.40</i>	<i>39.80</i>	<i>1.20</i>	<i>41</i>
<i>Warna</i>	<i>Stand. Milk</i>	<i>29.60</i>	<i>1.30</i>	<i>30.90</i>	<i>1.10</i>	<i>32</i>
<i>Warna</i>	<i>Cow Milk</i>	<i>27.60</i>	<i>1.30</i>	<i>28.90</i>	<i>1.10</i>	<i>30</i>
<i>Warna</i>	<i>Toned Milk</i>	<i>26.60</i>	<i>1.30</i>	<i>27.90</i>	<i>1.10</i>	<i>29</i>
<i>Warna</i>	<i>D. Toned Milk</i>	<i>25.60</i>	<i>1.30</i>	<i>26.90</i>	<i>1.10</i>	<i>28</i>
<i>Swaraj</i>	<i>C M Milk</i>	<i>30.60</i>	<i>0.9</i>	<i>31.50</i>	<i>1.50</i>	<i>33</i>
<i>Swaraj</i>	<i>T M Milk</i>	<i>29.10</i>	<i>1.40</i>	<i>30.50</i>	<i>1.50</i>	<i>32</i>
	<i>Avg.</i>	<i>29.65</i>	<i>1.27</i>	<i>29.48</i>	<i>1.2</i>	

7. Apart from above, Ld. AR relied on the decision of Coordinate Bench of ITAT in the case of **Shri Mahesh Vishnu Parab Vrs. ITO in ITA No. 8833/Mum/2010.**

8. On the other hand, Ld. DR supported the orders passed by the revenue authorities and submitted that the results declared by the assessee are not reliable and supported the findings of revenue authorities by considering the peculiar facts of this case.

9. Considered the rival submission and material placed on record, we notice from the record that assessee is a milk supplier and purchases milk from Swaraj India Industries Ltd, Shree Warna Sahakari Dudh Utpadak Prakiya Sangh Ltd, etc. and its main source of income only a commission income on sales of above milks. Assessee has submitted a detail chart on earning of commission from milk producers, which is ranging from Rs. 1.40 to 0.90 i.e. on an average earned 4.3%. We notice that assessee has declared GP 5.93% and 6.3% in earlier AYs 2011-12 and 2012-13 respectively. In the current assessment year, assessee due to some reason known to him declare Rs. 1.76 crores instead of Rs. 4.69 crores and also declared GP @ 11.08%. Only during the assessment proceedings, assessee has come forward to declare the revised statement data with the revised sales and purchases and the GP @ 4.3%, whereas AO has completely rejected the submission of assessee and estimated the GP @

15%. At the same time on appeal, Ld. CIT(A) estimated the income @ 11% by considering the original financial statements and percentage of GP declared by the assessee.

10. After considering the overall facts of this case, we are of the view that it is not disputed that assessee is a milk supplier and earns only commission income based on the sales achieved by the assessee. As far as business models are concerned, there is no change from earlier assessment year to this assessment year and we notice that assessee has declared 5.93% of GP in AY 2011-12 and 6.3% in AY 2012-13. In our considered view, assessee can be assessed to tax only on real income and not on any estimation or surmises. Therefore, we are of the view that assessee has declared 11.08% as GP without substantiating the result declared by it, the reasons best known to him. Considering the overall situation, in our considered view, assessee should be charged to tax @ 7% (considering the gross profit declared by the assessee in AY 2011-12 and 2012-13, where there is 6% increase in GP and we expect that assessee must have increased its GP by 10%.) Accordingly, we direct the AO to estimate the income @ 7%. Therefore, the ground raised by the assessee is **partly allowed**.

11. In the net result, the appeal filed by the assessee stands **partly allowed.**

Order pronounced in the open court on 6th March 2020.

Sd/- (Pawan Singh) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : Sr.PS. Dhananjay	Sd/- (S. Rifaur Rahman) लेखासदस्य / Accountant Member 06.03.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai