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

\+ ITA 792/2019

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -1 ..... Appellant

Through: Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary & Mr. Aditya Gupta, Advs.

versus

M/S CREAMY FOODS LTD. ..... Respondent

Through: Mr. Madhur Aggarwal & Mr. Uma Shankar, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **12.02.2024**

1. The Income Tax Department ["**Department**"] is in appeal questioning the correctness of the views expressed by the Income Tax Appellate Tribunal ["**ITAT**"] and as embodied in the impugned order dated 28 February 2019.

2. We note that the issue itself pertains to the deletion of additions made in respect of undisclosed sales and expenditure. It is in the aforesaid backdrop that the appellant proposes the following questions of law for our consideration:

2.1 Whether on the facts and circumstances of the case, ITAT erred in law in deleting the addition made by the Assessing Officer ["**AO**"] on account of undisclosed sales of Rs.7,11,78,577/-?

2.2 Whether on the facts and circumstances of the case and in law, the ITAT erred in deleting the addition made by the AO on account of undisclosed expenditure of Rs.26,82,502/-?

2.3 Whether the ITAT has erred in not appreciating that the AO has computed the undisclosed sales on the basis of evidences seized during the search which proved that the assessee was indulging in undisclosed sales and the extrapolation was based on the details which was duly provided to the assessee and for which it failed to provide a rebuttal?

3. However, we note that the ITAT has undertaken a detailed analysis of the facts as they obtained as would be evident from a reading of the following paragraphs:

"**5.** The Assessing Officer observed that a logical and statistical remedy can be made from the disclosed sales and the undisclosed sales ratio is as under:

Total Quantity of milk as per documents found during the course of search (1.7.11 to 10.07.11 & 21.07.11 to 31.07.11)	**Qty. In Ltr.** 49,32,805
Less: Quantity of milk shown in the books of accounts	32,26,341
Unaccounted quantify of milk	1706464
% of unaccounted milk (1706464/ 4932805*100)	35%

6. And accordingly, the Assessing Officer computed the amount of undisclosed sales as under:

	(Qty. In Ltr.)
Quantity of Milk sale as per books of accounts	51,35,335
Unaccounted quantity of Milk (on the	27,16,16

basis of above)

Average selling rate of milk (per ltr) as per books of accounts	Rs. 26.21
Amount of Undisclosed sale	Rs. 7,11,78,577/-

7. Accordingly, the Assessing Officer made addition of Rs. 7.11 crores.

8. The assessee carried the matter before the CIT(A) and vehemently contended that the Assessing Officer has grossly erred in treating the entire sales as income of the asseseee. It was further brought to the notice of the CIT(A) that notings in the loose sheets pertained to only a period of 20 days and on the basis of the same, the Assessing Officer could not have extrapolated the figures to two A.Ys.

9. After considering the facts and detailed submissions, the ld. CIT(A) observed that the entire difference in purchase of milk as per daily milk procurement sheets and as recorded in the books cannot be taken, as daily procurement sheets also included purchase of husk and coal used for processing of milk and not in trading of milk. The CIT(A) further observed that the maximum income assessable in respect of purchase and sale of milk on the basis of documents seized works out to Rs.1,00,86,337/- and since the income of Rs. 93 lakhs has already been offered and assessed in the hands of the Director Shri Sandeep Aggarwal in A.Y. 2012-13, only the short fall of Rs. 7,86,337/- is to be assessed as income of the assessee. The CIT(A) deleted the addition of Rs. 26.82 lakhs being made on account of undisclosed investment in purchases.

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13. We have given a thoughtful consideration of the orders of the authorities below. The undisputed fact is that daily milk procurement sheets found and seized during the search proceedings pertains to the period 01.07.2011 to 31.07.2011. This means that the sheets pertain to only 20 days. It is also not in dispute that on the basis of these milk procurement sheets, one of the directors Shri Sandeep Aggarwal admitted to the fact that he is dealing in sale and purchase of milk in his individual capacity. This fact has also been acknowledged by the Assessing Officer. Accordingly, Shri Sandeep Aggarwal offered Rs. 93 lakhs in his return of income for A.Y. 2012-13 and the same has been assessed as such in his hands vide assessment order dated 28.03.2014 framed u/s 143(3) of the Act.

14. As exhibited elsewhere, total quantity of milk as per documents found during the course of search is 4932805 litres. Quantity of milk shown in the books of account was 3226341 litres which means the unaccounted quantity of milk was 1706464 litres which comes to 35% to the recorded quantity. Applying this ratio, to the quantity of milk sale recorded in the books of account, at 5135335 litres comes to 1797367 litres, which is wrongly taken by the Assessing Officer as 2716162 litres. If the average selling rate per litre as per books of accounts is applied on the unaccounted quantity of milk of 1797367 litres, value comes to Rs. 4.71 crores whereas the same is taken at Rs. 7.11 crores by the Assessing Officer for making addition.

15. If the profit margin of 10.56% is applied on this unaccounted sale, the same comes to Rs. 49 lakhs and the director in his individual capacity has accepted the unaccounted sale and offered Rs. 93 lakhs as his undisclosed income which has been accepted by the Assessing Officer. This means that undisclosed income has been fully covered by disclosure made by the director and, in fact, as mentioned above, it is at a much higher figure than what was supposed to be considered by the assessee.

16. In our considered opinion, the entire unaccounted sales cannot be added because there has to be some purchases and expenses related therewith. Therefore, making addition on the basis of profit margin is more logical and rationale. Moreover, though the daily milk procurement sheets were found but no document was found wherein the revenue can say that the assessee was also making undisclosed purchases. The most important fact which needs to be highlighted is that the Assessing Officer, in his whims and surmises, has considered the extrapolation for only two A.Ys whereas, if he was so confident about the seized documents and income therein, he should have extrapolated for the entire block period of six years. The Assessing Officer did not give any reason for this.

17. Considering the facts of the case in totality, we are of the considered opinion that the CIT(A) rightly deleted the addition made by the Assessing Officer but erred in sustaining the addition of Rs. 7,86,337/- which, in our considered opinion, on facts discussed hereinabove, needs to be deleted also."

4. As would be evident from the above, the individual Director had accepted the unaccounted sales and offered the same for the purposes of taxation in his own hands. On an overall assessment of facts, the ITAT has in our considered opinion rightly come to pass the order in terms aforenoted.

5. We find that the appeal does not raise any substantial question of law. The appeal shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 12, 2024/kk