

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 1176/DEL/2015 [A.Y 2011-12]

ITA No. 1176/DEL/2015 [A.Y 2012-13]

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

Vs.

M/s Creamy Foods Ltd
R/o E-13/29, 2nd Floor
Harsha Bhawan, Middle Circle

PAN: AABCC 7375 A

ITA No. 971/DEL/2015 [A.Y 2012-13]

M/s Creamy Foods Ltd
R/o E-13/29, 2nd Floor
Harsha Bhawan, Middle Circle
Connaught Place, New Delhi

Vs.

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

PAN: AABCC 7375 A

(Applicant)

(Respondent)

Assessee By : Shri Salil Aggarwal, Adv
Ms. Ashima Neb, Sr. Adv
Shri Shailesh Gupta, Adv

Department By : Ms. Nidhi Srivastava, CIT-DR

Date of Hearing : 25.02.2019

Date of Pronouncement : 28.02.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

ITA No. 1176/DEL/2015 is an appeal preferred by the Revenue against the order of the CIT(A) - 23, New Delhi dated 18.12.2014 pertaining to A.Y 2011-12. ITA Nos. 1177/DEL/2015 and 971/DEL/2015 are cross appeals by the Revenue and assessee preferred against the order of the CIT(A) -23, New Delhi dated 18.12.2014 pertaining to A.Y 2012-13. Since all these appeals were heard together and involve common issues, these are being disposed of by this common order for the sake of convenience and brevity.

ITA No. 1176/DEL/2015 [A.Y 2011-12]

2. Briefly stated, the facts of the case are that search was conducted at the premises of the assessee on 04.08.2011, which pertains to F.Y.2011-12 relevant to A.Y 2012-13. During search proceedings, daily milk procurement sheets were seized from the office of the assessee. These sheets were prepared at the plant at Village Bartoli and sent to the Head Office every day. The sheets found pertained to the period 01.07.2011 to 10.07.2011 and from

21.07.2011 to 31.07.2011. Taking a leaf out of the entries found in these loose sheets, the Assessing Officer formed a belief that the assessee is making unaccounted sales and the same can be logically extended to the entire block period. However, the Assessing Officer chose to extrapolate the behaviour of the assessee in respect of unaccounted sale of milk to two years only, namely, A.Y 2012-13 and 2011-12.

3. The assessee was asked to show cause as to why the addition of suppressed sales should not be made. In response, the assessee filed the following reply:

"Now we would like to draw your kind attention that total undisclosed quantity (as per weight slip) of 62,17,720/- mentioned in the notice is not true and the basis of working out the quantity of 62,17,720/- have not made available to us. The quantity of milk as per weight slip is 49,32,805 and the details in respect of the same is enclosed and marked as Annexure -I. Further from the perusal of the weight slip it may be observed that husk and coal also forms part of weight slip and this fact have also been brought the notice of the department in the course of post search proceeding.

Without prejudice to above we would like to draw your kind attention that out of 62,17,720 litres of milk, 32,26,341 is part of

books of accounts of the assessee (The details of 32,26,341 litres of milk is enclosed and marked as Annexure - II). The Balance quantity being the 29, 91,379/- litres of milk have been surrendered in the hands of Shri Sandeep Aggarwal who was controlling the affairs of the company.

In this connection attention is drawn to the computation of income of Shri Sandeep Aggarwal for the A Y 2012-13 (the copy of computation of income of Shri Sandeep Aggarwal is enclosed and marked as Annexure - III) as per which a sum of 92,50,000/- have been surrendered and the taxes on the same have already been filed".

4. After considering the reply made by the assessee, the Assessing Officer accepted that one of the directors Shri Sandeep Aggarwal has admitted the fact that he is dealing in sale and purchase of milk in his individual capacity during the post search enquiries. However, the Assessing Officer did not accept the contention of the assessee that it has not made unaccounted sale in other months of the year, though the documents in respect of undisclosed sale in respect of other months were not found during the search proceedings.

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.inLtr) 49,32,805
Less : Quantity of milk shown in the books of accounts	<u>32,26,341</u>
Unaccounted quantity of milk % of unaccounted milk (1706464/4932805*100)	1706464 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 basis of above)	27,16,16
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 assessee. 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 Id. 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.

10. Aggrieved by this, the Revenue is before us in A.Y 2011-12 and the assessee is in cross appeal in A.Y 2012-13.

11. Before us, the ld. DR strongly supported the findings of the AO. It is the say of the ld. DR that even if the Assessing Officer has made some statistical estimation, the CIT(A) has also erred in making estimation while deciding the first appeal.

12. Per contra, the ld. AR vehemently stated that there are factual errors in the calculation made by the Assessing Officer and drew our attention to the correct calculation. The ld. AR concluded by stating that the entire addition has been made on presumptions and surmises without there being any direct evidence brought on record. Therefore, the additions made by the Assessing Officer are rightly deleted by the CIT(A). However, the ld. AR vehemently stated that the addition of Rs. 7,86,337/- sustained by the CIT(A) also deserves to be deleted.

13. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that daily milk procurement sheets found and seized during the search proceedings pertain 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 additions 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.

18. In the result, the appeals of the Revenue in ITA Nos. 1176 and 1177/DEL/20154 are dismissed and that of the assessee in ITA No. 971/DEL/2015 is allowed.

The order is pronounced in the open court on 28.02.2019.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

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

Dated: 28th February, 2019

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	
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Date of dispatch of the Order	