

**IN THE SUPREME COURT OF
BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

**INCOME TAX REFERENCE
APPLICATION NO. 240 OF 2011.**

Zinat Ara, J
Kazi Md. Ejarul
Haque Akondo, J

**Judgment on
26.02.2018.**

Grameen Danone Foods
Limited represented by its
Executive Director
Grameen Bank Bhaban
(13th Floor), Mirpur-2
Dhaka- 1216.
.....Applicant.

Vs

The Commissioner of
Taxes, Company Circle
No. 7, Taxes Zone-3
Dhaka.
.....Respondents.

For the applicant. Mr. Sarder Jimmat Ali with
Mr. Md. Forrukh Rabman,
Mr. Md. Delower Hossin,
Advocates

For the Respondent. Ms. Nurun Nahar, AAG

Terms, Issues and Phrases:

IT reference, Questions of fact- not to be decided in Reference jurisdiction, Remanding back the case for the Tribunal, Cash sale of yougurt- not to be compared with foreign company in assessment of a local company, Question on trading account- question of fact, Determination of sale as well as rate of gross profit- a question of fact.

Main Decision:

In the above context, the matter is sent back on remand to the Tribunal for deciding the appeal afresh in accordance

with law considering all the aspects of the appeal, after giving the assessee an opportunity to take additional grounds in appeal, to produce further documents, if so required.

The Tribunal is further directed to dispose of the appeal within ninety days from the date of receiving copy of the judgment.....(Paras 28 and 29).

The Registrar, Supreme Court of Bangladesh is directed to take necessary steps under section 161(2) of the Income Tax Ordinance, 1984.....(Para 32).

**Income Tax Ordinance, 1984: Section 160:
Cash sale and Trading account: being
question of facts cannot be decided in
Reference jurisdiction:**

We are also of the similar view that in case of cash sale of yogurt, etc., it was not necessary for the seller i.e. the assessee to bother about the names and addresses of the purchasers or preserve it. But the DCT rejected it for the said reason, which is affirmed by the appellate authorities unlawfully.

Moreover, it appears from the assessment order that the assessee is a Bangladeshi company, but the DCT, while estimating the sale as well as rate of gross profit, rejecting the assessee's claim, estimated those considering only the sale and rate of gross profit of a renowned multi-national company registered in Bangladesh, namely, New Zealand Dairy Products Bangladesh Limited, which is not proper.....(Paras 21-22).

Income Tax Ordinance, 1984: Section 160: Determination of sale as well as rate of gross profit being a question of fact, cannot be determined in reference jurisdiction:

It is true that determination of sale as well as rate of gross profit is a question of fact and this question of fact has to be decided finally by the Tribunal.

In the instant case, it appears that the assessee raised question on trading account rejection before the Tribunal, but the Tribunal has not considered this aspect of this case, as it ought to have been done.

Be that as it may, in an income tax reference application, we are not going to discuss the detailed facts of the case, as this court is not sitting in an appellate jurisdiction.

However, it appears that the assessment order apparently shows some contradiction, etc. as discussed but both the appellate authorities, the Commissioner of Appeal and the Tribunal without considering those in a mechanical way rejected the appeals.....(Paras 23-26).

Income Tax Ordinance, 1984: Section 160: Contradictions in findings by DCT in its assessment order is to be determined by the Tribunal:

Thus, it is crystal clear from the assessment order that the DCT made contradictory remarks in the assessment order itself relating to submission of bills, vouchers, etc. by the assessee. In one place, the DCT mentioned that the assessee's representative produced travelling bills, vouchers, but at the time of assessment, he mentioned that the

assessee has not produced travelling bills, vouchers, etc.

Similarly, in the expenses relating to mobile phone bills, the DCT observed that the assessee has not filed bill, vouchers and call register. But the learned Assistant Attorney General frankly concedes that in case of pre-paid mobile phone, no bill is sent to the subscribers and she has also failed to show us any law that maintenance of call register is necessary.....(Paras 16-17).

However, it appears that the assessment order apparently shows some contradiction, etc. as discussed but both the appellate authorities, the Commissioner of Appeal and the Tribunal without considering those in a mechanical way rejected the appeals.....(Para 26).

Cases cited and/or relied on:

R. B. Jessaram Fatehchand (Sugar Dept.) v. Commissioner of Income-Tax, Bombay City II ITR (Vol. 75) 33.

JUDGMENT

ZINAT ARA, J:

1. This Income Tax Reference Application (hereinafter stated as the reference application) under section 160 of the Income Tax Ordinance, 1984 (hereinafter referred to as the Ordinance) has arisen out of the order dated 30.01.2011 passed by the Taxes Appellate Tribunal, Division Bench-5, Dhaka in Income Tax Appeal No. 660 of 2010-2011. This is relating to the assessment year 2008-2009.

2. The assessee-applicant-Grameen Danone Foods Limited (hereinafter stated as the assessee) is a company limited by shares and registered under the Companies Act, 1994. The assessee is engaged in the business of developing and dealing in food products, dairy products and beverage. The assessee-company is formed to carry out social business and so, its profit is not for financial benefit but for social benefits i.e. supplying nutrition to the poor people, particularly, to the children at cheap rate by selling milk based products like yogurt, etc.

3. The assessee filed its income tax return for the assessment year 2008-2009 showing its income at a loss of Tk. 1,68,63,036/- before the Deputy Commissioner of Taxes, Companies Circle-7, Taxes Zone-3, Dhaka (hereinafter referred to as the DCT). Whereupon the DCT illegally assessed the income of the assessee ex parte at Tk. 14,230/-

4. Being aggrieved by the assessment order, the assessee preferred an appeal being Aikor Appeal Patra-445/Coy-7/Ka:Au:-3/2009-10 before the Commissioner of Taxes (Appeals), Taxes Appeal Zone-3, Dhaka (the Commissioner of Appeal, in brief). The Commissioner of Appeal, upon hearing, rejected the appeal by order dated 24.06.2010 and thereby, affirmed the assessment order made by the DCT.

5. Being aggrieved, the assessee preferred a second appeal being Income Tax Appeal No. 660 of 2010-2011 (assessment year 2008-2009) before Taxes Appellate Tribunal, Division Bench-5, Dhaka (briefly, the Tribunal). The Tribunal, upon hearing, by order dated 30.01.2011, rejected the appeal and thereby, maintained the order passed by the Commissioner of Appeal.

6. In the above backdrop, the assessee has filed this reference application raising certain questions of law.

7. Subsequently, by filing a supplementary affidavit dated 29.10.2017, the assessee reformulated the original questions of law in the following manner:

- I. Whether, in the facts and on the circumstances of the case, the Tribunal under sections 159(2)/29, 130A, 183(2) of the Income Tax Ordinance, 1984 (the Ordinance) was justified in maintaining disallowances except statutory ones for reasons of non deduction of tax (where applicable) and for non verifiability of expenses while the applicant made proper deduction of taxes and produced 100% of the expenditure verifiable?
- II. Whether, in the facts and on the circumstances of the case, the Tribunal under section 159(2) of the Ordinance was justified in upholding inclusion of depreciation in computation of trading version, in so far the schedule of depreciation on plant and Machineries, had been presented in the audited accounts and further the Tribunal is justified holding such depreciation as a component for application of trading version and that the application is disentitled to depreciation allowance as per 3rd schedule of the Ordinance?

