LEX/BDHC/1397/2025

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

Income Tax Reference Application No. 89 of 2015, Income Tax Reference Application No. 33 of 2016, Income Tax Reference Application No. 448 of 2015 and Income Tax Reference Application No. 78 of 2021

Decided On: 14.08.2025

Grameen Danone Foods Limited **Vs.** The Commissioner of Taxes, Company Circles No. 287, Taxes Appeal Zone-2, Dhaka

Hon'ble Judges/Coram:
Razik-Al-Jalil and Shathika Hossain, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Sarder Jinnat Ali, Mohammad Forrukh Rahman, Md. Delower Hossin, Shahinoor Alam and Sk. Abdullah, Advocates

For Respondents/Defendant: A.F.M. Saiful Karim, DAG, Mehedi Hasan Ronve, AAG, Mohammad Delawar Hosain, AAG, Israt Jahan, AAG, Md. Shahinoor Alam, AAG and Md. Raihanul Mustafa, AAG

JUDGMENT

Razik-Al-Jalil, J.

1. In the above four Income Tax Reference applications petitioners are same but assessment year is different. Income Tax Reference Application No. 89 of 2015 is relating to assessment year 2009-2010, Income Tax Reference Application No. 33 of 2016 is relating to assessment year 2010-2011, Income Tax Reference Application No. 448 of 2015 is relating to assessment year 2011-2012 and Income Tax Reference Application No. 78 of 2021 is relating to assessment year 2016-2017. All are taken up together for hearing and disposed of by a single judgment as there are involved a common question of law and facts.

2. Facts relevant for disposal of the above four Income Tax References are that these income tax reference applications are filed under section 160 of the Income Tax Ordinance, 1984. The Income Tax Reference Application No. 89 of 2015 arises out of the Order dated 30.06.2014 passed by the Taxes Appellate Tribunal, Division Bench-4, Dhaka in Income Tax Appeal No. 2170 of 2013-2014 for the assessment year 2009-2010. The Income Tax Reference Application No. 33 of 2016 arises out of the Order dated 30.09.2015 passed by the Taxes Appellate Tribunal, Division Bench-2, Dhaka in Income Tax Appeal No. 4713 of 2014-2015 for the assessment year 2010-2011. The Income Tax Reference Application No. 448 of 2015 arises out of the Order dated 30.09.2014 passed by the Taxes Appellate Tribunal, Division Bench-4, Dhaka in Income Tax Appeal No. 4009 of 2013-2014 for the assessment year 2011-2012. The Income Tax Reference Application No. 78 of 2021 arises out of the Order dated 28.09.2020 passed by the Taxes Appellate Tribunal, Division Bench-1, Dhaka in Income Tax Appeal No. 5732 of 2019-2020 for the assessment year 2016-2017.

3. The common facts of all the income tax reference applications are that the assessee applicant Grameen Danone Foods Limited is being run by a company limited by shares registered under the Companies Act, 1994 for fulfilment of one of its object namely to carry out business of developing and dealing in Food products, dairy products and beverage industries and with an aim of passing the benefits to the customers. The company is formed to carry out social business where the profits computed not in financial benefit but in terms of social benefits i.e. supplying nutrition to the poor people particularly children at cheap rate by selling milk based product like yogurt etc.

4. In Income Tax Reference Application No. 89 of 2015 the assessee applicant filed return for the assessment year 2009-2010 showing his loss of Tk.2,20,97,856/- but the DCT, company circle-7, Taxes Zone-3 after receiving the return of the applicant assessed exparte Tk.3,33998/- as income tax for the year 2009-2010 and issued demand notice dated 30.12.2010 for Tk. 1,25,249/-.

5. Being aggrieved by the Order of assessment passed by the Deputy Commissioner of Taxes, Companies Circle-7, Zone-3, Dhaka the assessee-applicant preferred appeal before the Commissioner of Taxes (Appeal), Tax Appeal Zone-3, Dhaka who upon hearing by his order dated 25.09.2011 in the আয়কর আপীল পত্র নং-৪৭০/কোং-৭/কঃঅঃ-৩/২০১০-২০১১ relating to the assessment year 2009-2010 disposing the appeal and affirmed the order of assessment made by the Deputy Commissioner of Taxes.

6. Being aggrieved thereby, the applicant preferred Appeal No. I.T.R. No. 1567 of 2011-2012 in the Taxes Appellate Tribunal Division Bench-2, Dhaka, after hearing the matter, the Appellate Tribunal directed the Deputy commissioned of Taxes to pass a corrected demand based on the documents submitted before the Tribunal.

7. Accordingly, Deputy Commissioner of Taxes, Circle-287, Tax Zone-14 issued a revised demand of Tk. 4430 dated 30.05.2012 based on the income of Tk.2,07,437/-.

8. Being aggrieved thereby, the assessee applicant filed appeal before the Commissioner of Taxes (Appeal) Zone-02, Dhaka being Tax Appeal No. 890, 891/Circle-287. After hearing the Matter, the commissioner of Taxes, (Appeal) by order dated 19.11.13 modified the order of DCT fixing the Total income of the Appellant Tk.97,437.

9. Being aggrieved by the said order of the Commissioner of Taxes (Appeal), the applicant preferred a Second Appeal being I.T.A. No. 2170 of 2013-2014 (Assessment Year 2009-2010) before the Taxes Appellate Tribunal, Division Bench-4, Dhaka who upon hearing the appeal by his order dated 30.06.2014 disposed of the appeal and maintained the order dated 23.10.2013 of the Commissioner of Taxes (Appeal).

10. In this backdrop the assessee applicant filed the instant Income Tax Reference Application No. 89 of 2015 before this Court raising some questions of law.

11. In Income Tax Reference Application No. 33 of 2016 the assessee applicant filed return for the assessment year 2010-2011 showing loss of Tk.2,74,94,847/- but the DCT after receiving the return of the applicant rejected the applicant's return estimated Tk.1,54,23,693/- and issued demand notice dated 30.11.2011 for Tk.66,51,468/-.

12. Being aggrieved by the Order of assessment dated 30.11.2011 passed by the Deputy Commissioner of Taxes, Companies Circle-7, Zone-3, Dhaka the assessee-applicant preferred appeal before the Commissioner of Taxes (Appeal) Tax Zone-3, Dhaka who upon hearing by order dated 23.10.2012 sent the matter to DCT on remand with a direction to hear the matter afresh after serving upon the applicant statutory notice.

13. Accordingly, DCT after serving the required statutory notice upon the Applicant and hearing the matter by order dated 09.12.2013 issued fresh Tax Assessment relating to assessment for the year 2010-2011 and demand Tk.66,51,468/- based on the income of Tk.1,54,23,693/-.

14. Being aggrieved thereby, the assesse-applicant filed Appeal before the Commissioner of Taxes (Appeal), Tax Appeal Zone-3, Dhaka who upon hearing by his order dated 24.11.2013 in the First Appeal No. 1164/Circle-287(coy.)/2013-2014 relating to the assessment year 2010-2011 disposed of the said appeal and affirmed the order of assessment made by the Deputy Commissioner of Taxes, Companies Circle-7, Zone-3, Dhaka.

15. Being aggrieved by the said order of the Commissioner of Taxes (Appeal) the applicant preferred a Second Appeal being I.T.A. No. 4713 of 2014-2015 (Assessment Year 2010-2011) before the Taxes Appellate Tribunal, Division Bench-2, Dhaka who upon hearing the appeal by his order dated 30.09.2015 dismissed the appeal and maintained the order dated 24.11.2013 of the Commissioner of Taxes (Appeal).

16. In this backdrop the assessee applicant filed the instant Income Tax Reference Application No. 33 of 2016 before this Court raising the questions of law.

17. In Income Tax Reference Application No. 448 of 2015 the assessee applicant filed return for the assessment year 2011-2012 showing loss of Tk.3,74,00,217/- but the DCT after receiving the return of the applicant rejected the applicant's return estimated Tk.3,01,80,086/- as income for the assessment year 2011-2012 and issued demand notice dated 31.03.2014 for Tk.1,22,61,366/-.

18. Being aggrieved by the Order of assessment dated 31.03.2014 passed by the concerned Deputy Commissioner of Taxes, the assessee-applicant preferred appeal before the Commissioner of Taxes (Appeal), Tax Appeal Zone-2, Dhaka who upon hearing by his order dated 23.02.2014 in the First Appeal No. 213/Circle-287/2013-2014 relating to the assessment year 2011-2012 disposed of the said appeal and affirmed the order of assessment made by the Deputy Commissioner of Taxes.

19. Being aggrieved by the said order of the Commissioner of Taxes (Appeal), the applicant preferred a Second Appeal being I.T.A. No. 4009 of 2013-2014 (Assessment Year 2011-2012) before the Taxes Appellate Tribunal, Division Bench-4, Dhaka who upon hearing the appeal by his order dated 30.09.2014 disposed of the appeal and maintained the order dated 23.02.2014 of the Commissioner of Taxes (Appeal).

20. In this backdrop the assessee applicant filed the instant Income Tax Reference Application No. 448 of 2015 before this Court raising the questions of law.

21. In Income Tax Reference Application No. 78 of 2021 the assessee applicant filed return for the assessment year 2016-2017 showing loss of Tk.9,19,78,306/- but the DCT after receiving the return of the applicant rejected the applicant's return and estimated Tk.2,63,25,328/- and by demand order dated 25.02.2019 directed to pay Tk.1,79,595.

22. Being aggrieved by the said Order dated 25.02.2019 passed by the concerned Deputy Commissioner of Taxes, the assessee-applicant preferred appeal before the Commissioner of Taxes (Appeal), Tax Appeal Zone-2, Dhaka who upon hearing by his order dated 24.10.2019 in the First Appeal No. 1153/Circle-287/2018-2019 relating to the assessment year 2016-2017 disposed of the said appeal and directed the Deputy Commissioner of Taxes to take necessary steps with regard to crediting the amount based on evidence and also issue a notice providing the applicant the opportunity of hearing and accordingly to pass a fresh order.

23. Accordingly, the Deputy Commissioner of Taxes, Company Circle-287, Taxes Zone-14 assessed Tk.2,76,62,828 as loss for the year 2016-2017 and issued demand Notice dated 09.12.2019 for Tk.1,49,594/-

24. Being aggrieved by the said order of the Commissioner of Taxes (Appeal), the applicant preferred a Second Appeal being I.T.A. No. 5732 of 2019-2020 (Assessment Year 2016-2017) before the Taxes Appellate Tribunal, Division Bench-1, Dhaka who upon hearing the appeal by his order dated 28.09.2020 disposed of the appeal and maintained the order dated 24.10.2019 of the Commissioner of Taxes (Appeal).

25. In this backdrop the assessee applicant filed the instant Income Tax Reference Application No. 78 of 2021 before this Court raising the questions of law.

26. The assessee reformulated the questions of law in all the Income Tax Reference applications in the following manner:

> (i) Whether, in the facts and on the circumstances of the case, the Tribunal under sections 159(2)/29/30A/83(2) of the Income Tax Ordinance, 1984 (the Ordinance) was justified in upholding the order of the CT(A) who endorsed the assessment while the DCT acted based, on no evidence, while disallowing expenses for reasons of non-deduction of tax (where applicable) and for non verifiability of expenses when the applicant made proper deduction of taxes and produced bills, vouchers and all other related evidences before the DCT?
>
> (ii) Whether, in the facts and on the circumstances of the case, the Tribunal under section 159(2) of the Income Tax Ordinance, 1984 was justified in upholding the opinion of the CT(A), maintaining the order of assessment while, the DCT ignoring the assessee's books of accounts, estimated excess gross profit, and imposed rate of gross profit with reference to some other company, asiding all material evidence such as the trading account and register books provided in support of the assessee's income calculation?
>
> (iii) Whether, in the facts and on the circumstances of the case, the Tribunal under section 159(2)/35(3) of the Income Tax Ordinance, 1984 was justified in upholding the order of the CT(A) without applying his judicious mind in maintaining the DCT's action who rejected the disclosed sales due to alleged non-submission of name, address and other details of purchasers, in case of cash sales by the assessee?
>
> (iv) Whether, in the facts and on the circumstances of the case, the Tribunal under sections 159(2)/29(xvi) of the Income Tax Ordinance, 1984 was justified in upholding the order of the CT(A) who maintained the estimated excess income by the DCT from sales of scrap and other items on conjecture and surmise, in absence of any evidences in his possession in this regard?

27. The respondent No. 3 contested these references by filing affidavit-in-opposition controverting the statements made in the reference applications and supporting the orders of the DCT, the Commissioner of Appeal and the Tribunal.

28. Mr. Sarder Jinnat Ali, the learned Advocate for the assessee-applicant, appearing with the learned Advocates Mr. Md. Forrukh Rahman and Mr. Md. Delower Hossin, takes us through the reference application, the series of supplementary affidavits, the annexures thereof and put forward the following arguments before us:-

(i) upon receiving notices, the assessee's representative appeared before the DCT and submitted salary statements, documents relating to repairing and maintenance expenses, copies of electricity bills, gas bills, fire service expenses, security service expenses, bills vouchers relating to hire of transportation, bills vouchers relating to traveling, bills relating to telephone, FAX, Email, Bank statements, permanent assets, etc, which is also apparent from the assessment order;

(ii) the DCT, upon receiving all the aforesaid documents in support of the assessee's claim, has not served any notice or further informed the assessee under section 82(2) of the Ordinance for producing any further documents. Had the assessee been asked for producing any other relevant documents, the assessee would have produced the said documents in support of its claim;

(iii) though the appellate tribunal in its judgment stated that the Tribunal directed assessee for producing relevant papers in support of their claim but in fact the assessee was not given any chance to produce any documents in support of their return. The Tribunal as an appellate and final fact finding authority ought to have decided the matter considering all the facts and circumstances of the case. But the Tribunal, without doing so, in a mechanical way affirmed the order of the Commissioner of Appeal and rejected the appeal preferred by the assessee unlawfully.

(iv) in the above facts and circumstances, the matter ought to be remanded to the Tribunal for deciding the matter afresh after giving an opportunity to the assessee-applicant to submit necessary documents before the Tribunal.

(v) the Tribunal was not justified in maintaining the DCT's action of rejecting the trading account and estimating sales and gross profit by applying the gross profit rate of 23.05%.

29. He lastly submits that in an identical case i.e. with same parties, same subject matter and regarding assessment order of the year 2008-2009 of assessee, on filing an Income Tax Reference Application No. 240 of 2011 by the assessee before the High Court Division of the Supreme Court of Bangladesh, the High Court Division passed its judgment on 26.02.2018. Where this Court ordered to sent back the matter 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 and also directed to dispose of the appeal within 90(ninety) days from the date of receiving copy of the judgment. Therefore, this Court also can pass an order to send back the matter, upon setting aside the order of the Tribunal, on remand to the Tribunal for deciding the matter after giving an opportunity to the assessee-applicant to produce documents before the Tribunal.

30. In reply, Mr. A.F.M. Saiful Karim, the learned Deputy Attorney General appearing on behalf of the respondent, contends that the questions re-formulated in the reference application have neither been raised nor decided by the Tribunal and therefore, there is no scope to decide the aforesaid questions as re-formulated in the reference application. He next contends that it is a settled principle of law that the question relating to estimate of sale as well as gross profit is a question of fact, which cannot be decided in an income tax reference application.

31. He further contends that the assessee failed to supply all necessary documents, bills and vouchers in support of its claim and, as such, the DCT lawfully rejected some of the claim of the assessee. Therefore, the said order was legally affirmed firstly, by the Commissioner of Appeal and secondly, by the Tribunal. He finally contends that in the facts and circumstances, answers are not necessary to the questions as re-formulated in the reference applications and the reference applications are liable to be rejected.

32. The learned Deputy Attorney General lastly submits that as per submission of the learned Advocate for the applicants if this Court send the case back to the taxes appellate Tribunal on remand to hear the matter afresh as sent in the earlier year, they would have no objection.

33. We have gone through the reference application and the connected materials on record Viz. the assessment order made by the DCT, the first appellate order passed by the Commissioner of Appeal and the second appellate order passed by the Tribunal. We have also gone through the series of supplementary affidavits filed by the assessee and the affidavit-in-reply filed by the department-respondent.

34. At the time of hearing, the learned Advocate for the applicant submits that the DCT, upon receiving all the documents in support of the assessee's claim has not served any notice or further informed the assessee under section 82(2) of the Ordinance for producing any further documents before taking different view. Moreover, the Appellate Tribunal in its judgment stated that the Tribunal directed assessee for producing relevant paper in support of their calim but in fact, the assessee was not given any chances to produce any documents in support of their return.

35. 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.

36. 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.

37. 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.

38. 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.

39. Considering the above facts and circumstances as discussed hereinbefore, we are of the view that without answering the questions re-formulated in this reference application, the matter should be sent back on remand to the Tribunal for deciding the matter afresh.

40. In the above context, the matter is sent back on remand to the Tribunal for deciding the above mentioned 4 appeals afresh in accordance with law considering all the aspects of the appeals, after giving the assessee an opportunity to take additional grounds in appeal, to produce further documents, if so required.

41. The Tribunal is further directed to dispose of the appeals within shortest possible time.

42. With the above observations and directions, the reference applications are disposed of without answering the questions reformulated by the assessee. No costs.

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

Shathika Hossain, J.

I agree.