

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**"SURAT" BENCH, SURAT**  
**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER**  
**AND**  
**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

अपील सं./ITA No.3030/Ahd/2013  
निर्धारण वर्ष/Asstt. Year:2009-2010

D.C.I.T, Bharuch Circle, Bharuch.	Vs.	Ganesh Khand Udyog Sahakari Mandali Ltd. At & PO- Vataria, Taluka Valia, Dist Bharuch-393135  PAN: AAAAS2139R
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(Applicant)	(Responent)
Revenue by :	Smt. Smitha V. Nair, Sr. DR
Assessee by :	None

सुनवाई की तारीख/Date of Hearing : 12/11/2018  
घोषणा की तारीख /Date of Pronouncement: 13/11/2018

**आदेश/O R D E R**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

This revenue's appeal for A.Y. 2009-10, arises from order of the Id.CIT(A)-VI, Baroda, dated 02/09/2013, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. Both the grounds of revenue are interconnected to the solitary issue of disallowance of Rs.5,92,19,981/- u/s.40A(2)(b) of the Act.

3. The brief fact of the case is that assessee has filed its return of income for the year under consideration on 25/09/2009, declaring total income of Rs.Nil and showing current year loss of Rs.4,10,59,457/-. Subsequently, the case was selected for scrutiny by issuing notice u/s.143(2) of the Act. During the course of assessment proceedings the Assessing Officer, has noticed that Statutory minimum price of Sugar Cane has been fixed at Rs.94.64 per quintal by National Federation of Co-operative Sugar Factories Ltd. Whereas the assessee society has paid price of sugarcane at the rate of 1793.6 per quintal to the farmers.

4. After taking into consideration the above fact, the Assessing Officer has observed that all the farmers were members of the society and any benefit in excess of reasonableness was disallowable as per the provisions of section 40A(2)(b) of the Act. Thereafter, the Assessing Officer has issued a show cause notice to the assessee to explain why not excess price of sugarcane given to the farmers should not be disallowed as per the provision of section 40A(2)(b) of the Act. In this regard the assessee responded that the section 40A(2)(b) is not applicable to the co-operative society, thereafter any amount paid to the members of the society over and above the Statutory minimum price of sugarcane paid to the farmers should not be disallowed as per the provisions of section 40A(2)(b) of the Act. The Assessing Officer has not accepted the explanation of the assessee stating that Statutory minimum price of sugarcane has been fixed at Rs.94.68 per quintal whereas assessee society has paid price of sugar cane at the rate of Rs.1793.6 per quintal to the farmers. He was of the view that there should be reasonableness in payment of given price to the farmers, therefore, he observed that Rs.1700 was the appropriate market value of cane per ton for the assessee and the balance price amount of Rs. 93.6 ton paid to the farmers was treated as excessive payment u/s.40A(2)(b) of the Act. Accordingly, the Assessing Officer has made addition of Rs.5,92,19,981/- u/s.40A(2)(b) of the Act.

5. Aggrieved assessee has filed an appeal before the Id.CIT(A). The Id.CIT(A) has allowed the appeal of the assessee by placing reliance on the decision of *ITAT, Pune Bench in the case of Shivamrut Dudh Utpadak Sah. Sangh Maryadit Vs DCIT, (1999) 63 TTJ (Pune) 405* and also decision of Hon'ble High Court of Bombay, in the case of *CIT vs Manjara Shetkari Sahakari Sakhar Karkhana Ltd. & Ors.(2008) 214 CTR Bom) 662*.

6. During the course of appellate proceedings before us the Id.DR, has supported the order of the Id.AO. On the other hand, nobody has attended from the side of the assessee.

7. After hearing the Id.DR, and perusal of the material available on record, it is noticed that on similar facts and identical issue the Co-ordinate Bench of the ITAT, Pune, in the case of *Shivamrut Dudh Utpadak Sah. Sangh Maryadit Vs DCIT(supra)* has held that '*Co-operative society enjoys special status that it has own individuality and distinctness in the scheme of the IT Act. A Co-operative society is a voluntary AOP, it is economic institution formed for social purpose and not motivated by entrepreneurial profits by distinguishes from the association of business*'. The Co-ordinate Bench of ITAT has held that the provisions of section 40A(2)(b) of the Act, does not apply to co-operative society. Hence, no disallowance under that section can be made in the assessment of co-operative society. The Hon'ble Bombay High Court also in the case of *CIT vs Manjara Shetkari Sahakari Sakhar Karkhana Ltd.(supra)* has held that '*the section 40A(2) does not apply to the co-operative society, hence no disallowance under that section can be made in the assessment of the Co-operative society*'. Further it is also noticed that assessee has explained that an individual shareholder cannot have beneficial interest of more than 0.05% in the shares of the co-operative society. It is also noticed that authorized capital in the case of assessee was Rs.5 Cr. and an individual member cannot subscribe more than 25,000/- worth of shares, without approval from the Government. These facts were not disputed/disproved by the Assessing Officer

8. In the light of above facts and legal findings, we are of the view that the provisions of section 40(A)2(b) of the Act, are not applicable to co-operative society. Therefore, we are inclined with the decision of Id.CIT(A), that the provision of section 40(A)2(b) of the Act, were not applicable to the case of the assessee, therefore we do not find any merits in the appeal of the revenue and the same is dismissed.

9. In the result, appeal filed by the revenue is dismissed.

**Order pronounced in the Court on 13/11/2018 at Surat.**

**-Sd-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**

**-Sd-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

True Copy

Surat; Dated 13/11/2018