

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VP AND  
SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.121 & 122/PUN/2017  
निर्धारण वर्ष / Assessment Years: 2010-11 & 2012-13

The Assistant Commissioner of Income Tax,  
Circle-2, Kolhapur.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Eco Cane Energy Ltd.  
Gat No. 72/2 & 76,  
Mahalung Kh. A/P. Tudaye,  
Tal. Chandgad,  
Dist. Kolhapur-416502  
PAN : AABCN7682D

.....प्रत्यर्थी / Respondent

Revenue by : Shri Sudhendu Das  
Assessee by : None

सुनवाई की तारीख / Date of Hearing : 20.11.2018  
घोषणा की तारीख / Date of Pronouncement : 26.11.2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM**

These two appeals have been filed by the Department. In ITA No. 121/PUN/2017, the Revenue has assailed the order of Commissioner of Income Tax (Appeals)-2, Kolhapur dated 03.11.2016 for the assessment year 2010-11 deleting penalty levied u/s.271(1) (c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

ITA No.122/PUN/2017, by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Kolhapur dated 03.11.2016 for the assessment year 2012-13.

2. The notice of appeals was sent to the assessee through RPAD on 22.10.2018 for today i.e.20.11.2018. Despite service of notice, none has appeared on behalf of the assessee. It appears that the assessee is not keen to defend the impugned orders. In such circumstances, we are proceeding to decide the appeals with the assistance of Id. DR and the material available on record.

We will first take up the appeal of Revenue in ITA No. 121/PUN/2017 for assessment year 2010-11.

**ITA No. 121/PUN/2017**  
**A.Y. 2010-11**

3. The Revenue has assailed the order of Commissioner of Income Tax (Appeals)-2, Kolhapur by raising following grounds:

*"1. On the fact and in the circumstances of the case and in law, whether the CIT(A) was justified in deleting the penalty levied u/s.271(1)(c) following the decision of the ITAT in assessee's case for A.Y.2010-11 ignoring the fact that additional sugarcane price paid over and above the purchase price fixed by the Government is nothing but appropriation of profit which is liable to be disallowed as business expenditure?"*

*2. The appellant craves leave to add, alter, amend or delete any of the above grounds of the appeal at the time of proceedings before the Tribunal which may please be granted.*

*3. The appellant prays that the order of the CIT (A) be vacated and that of the assessing officer's order may be restored."*

4. Shri Sudhendu Das representing the Department submitted that during scrutiny assessment proceedings, addition of Rs.2,41,58,633/- was made by

Assessing Officer by inter alia disallowing prior period expenditure in respect of additional cane purchase price claimed during the current assessment year. There were other additions in respect of repairs and maintenance expenditure, consultancy fees and travelling expenses. In appeal against the assessment order, the Commissioner of Income Tax (Appeals) deleted all other additions except addition on account of excess payment of cane price to the farmers. Penalty proceedings u/s.271(1)(c) of the Act were initiated in respect of the addition confirmed. The Assessing Officer vide order dated 18.06.2014 levied penalty of Rs.81,13,960/- in respect of aforesaid addition. The assessee filed appeal against the penalty order before the Commissioner of Income Tax (Appeals). The First Appellate Authority deleted the penalty by placing reliance on the order of Tribunal in assessee's own case for assessment year 2010-11 in ITA No.468/PN/2014 dated 29.01.2016. The ld. DR vehemently supported the order of Assessing Officer dated 18.06.2014 levying penalty u/s.271(1)(c) of the Act and prayed for reversing the order of Commissioner of Income Tax (Appeals).

5. We have heard the submissions made by ld. DR and have perused the orders of Authorities below. The only issue raised in appeal is against deleting penalty u/s.271(1)(c) of the Act in respect of addition of payment of excess cane price paid to farmers by assessee. The Commissioner of Income Tax (Appeals) deleted the penalty levied u/s.271(1)(c) of the Act by observing as under:

*"5. DECISION: I have carefully considered the matter. The appellant has raised 7 grounds of appeal out of which 4 are general grounds. In any case, all grounds are related to this single addition made by the AO. All grounds are therefore clubbed together for the sake of convenience. I have perused the order of the Hon'ble ITAT in the appellants own case for this AY 2010-11 in ITA No. 468/PN/2014. I find that the matter is squarely covered in favour of the appellant by the said decision. The Hon'ble ITAT has deleted the disallowance. Quoting from their order:-*

*"10. Thus in view of the facts of the case and the decision of the Hon'ble Delhi High Court discussed above, we are of the considered view that the*

*amount of Rs.2,33,30,414 paid by the assessee towards the additional cost of procurement of sugarcane in season 2008-09 crystallised when the Board of Directors decided to pay the additional cost to the farmers. The management of the assessee company could not have ascertained this expenditure in AY 2009-10. Accordingly we find merit in the appeal of the assessee. The appeal of the assessee is accepted to the extent of Rs.2,33,30,414 paid towards additional cost for procurement of sugarcane."*

*The Hon'ble ITAT has followed the decision of the Hon'ble Delhi High Court in the case of Exxon Mobil Lubricants (P) Ltd 328 ITR 17 (Del). From the above, it is evident that the addition itself having being deleted, the penalty on the said addition has no legs to stand. I am also constrained to point out the cursory approach of the AO. A plain reading of the penalty order reveals that no finding of even the quantum of income, for which inaccurate particulars have been filed, is not mentioned. In the absence of the same, the very basis of determination of tax sought to be evaded is a mystery. The AO has made no efforts to point out how the appellant has filed inaccurate particulars vis-a-vis this issue or concealed his income. The AO simply repeated what the CIT(A) has stated in his appellate order and concluded that inaccurate particulars have been filed. In any case as the quantum itself has been deleted, there is no question of levy of penalty. I therefore cancel the penalty levied in this case."*

The ld. DR has failed to controvert the well-reasoned finding of Commissioner of Income Tax (Appeals). In absence of any contrary material, we do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in deleting levy of penalty by following the order of Tribunal in assessee's own case for earlier assessment year. Accordingly, the impugned order is upheld and appeal of the Revenue for assessment year 2010-11 is dismissed.

6. Further, we observe that the manner in which penalty proceedings u/s.271(1)(c) have been initiated, are ambiguous. In assessment order dated 25.03.2013 while initiating penalty proceedings, the Assessing Officer has recorded satisfaction u/s.271(1)(c) of the Act without specifying charge for levy of penalty. However, while levying penalty, the Assessing Officer concluded that the assessee furnished inaccurate particulars of income, therefore, provisions of section 271(1)(c) of the Act are attracted. The manner in which satisfaction for initiating penalty u/s.271(1)(c) of the Act has been recorded suffers from

ambiguity and vagueness. Therefore, penalty levied u/s.271(1) (c) of the Act is liable to be deleted on this account as well. We hold and direct accordingly.

7. In the result, appeal of the Revenue for assessment year 2010-11 is dismissed.

**ITA No. 122/PUN/2017**  
**A.Y.2012-13**

8. The Revenue in appeal for assessment year 2012-13 has assailed the order of Commissioner of Income Tax (Appeals) by raising following grounds:

*“1. On the fact and in the circumstances of the case and law, whether the CIT(A) was justified in allowing the claim of expenditure pertaining to earlier year ignoring the facts as the assessee has been following the mercantile system of accountancy?”*

*2. On the facts and circumstances of the case and in law was the CIT(A) was not justified in following decision of the ITAT in assessee's case for AY.2010-11 ignoring the fact that additional sugarcane price paid over and above the purchase price fixed by the Government is nothing but appropriation of profit which cannot be allowed as business expenditure.*

*3. The appellant craves leave to add, alter, amend or delete any of the above grounds of the appeal at the time of proceedings before the Tribunal which may please be granted.*

*4. The appellant prays that the order of the CIT(A) be vacated and that of the assessing officer's order may be restored.*

9. The ld. DR submitted that assessee is engaged in manufacture and sale of sugar from sugarcane. During scrutiny assessment proceedings, the Assessing Officer observed that assessee had claimed expenditure to the tune of Rs.4,53,44,231/- as additional price paid to sugarcane suppliers i.e. cost over and above agreed purchase rate. The Assessing Officer further observed that additional sugarcane price paid to the farmers pertains to earlier assessment year, therefore, the same is not allowable in the current assessment year. The Assessing Officer rightly disallowed the aforesaid expenditure being prior period expenditure. The assessee carried the matter in

appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) following the order of Tribunal in assessee's own case for assessment year 2010-11 in ITA No.468/PN/2014 accepted the contentions of the assessee and reversed the findings of Assessing Officer.

10. We have heard the submissions made by ld. DR and have perused the orders of Authorities below. The solitary issue raised in the appeal by Revenue is against allowing claim of expenditure pertaining to preceding assessment year. We find that the Commissioner of Income Tax (Appeals) granted relief to the assessee by following the order of Tribunal in assessee's own case in assessment year 2010-11 in ITA No.468/PN/2014. The Co-ordinate Bench of the Tribunal in assessment year 2010-11 followed the decision of Hon'ble Delhi High Court in the case of Exxon Mobil Lubricants (P) Ltd. reported as 328 ITR 17. The ld. DR has neither brought to our notice any contrary decision nor the ld. DR has pointed any difference between the nature of transaction in the assessment year under appeal and the assessment year 2010-11 for which the Tribunal has granted relief to the assessee. We do not find any error in the order of First Appellate Authority in allowing the appeal of assessee by following Tribunal's order. Accordingly, the impugned order is upheld and appeal of the Revenue for assessment year 2012-13 is dismissed.

11. To sum up, both the appeals of the Revenue are dismissed.

Order pronounced on Monday , the 26<sup>th</sup> day of November, 2018.

Sd/-  
**R.S. SYAL**  
**VICE-PRESIDENT**

Sd/-  
**VIKAS AWASTHY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 26<sup>th</sup> November, 2018.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Kolhapur.
4. The Pr. CIT-2, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.