

आयकर अपीलिय अधिकरण “बी” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

Sl. No.	ITA No./ C.O. No.	Name of Appellant	Name of Respondent	Asst. Year
1-3	50/PUN/2012 51/PUN/2012 52/PUN/2012	DCIT, Circle-1, Nashik.	Vasant Rao Dada Patil S.S.K. Ltd., Viththewadi, Tal. Kalwan, Nashik. PAN: N/A	1992-93 1994-95 1996-97
4-6	76/PUN/2012 77/PUN/2012 78/PUN/2012	Vasant Rao Dada Patil S.S.K. Ltd., Viththewadi, Tal. Kalwan, Nashik. PAN: N/A	ACIT, Circle-1, Nashik.	1992-93 1994-95 1996-97
7	2140/PUN/2012	DCIT, Circle-1, Kolhapur.	Kumbhi Kasari Sahakari Sakhar Karkhana Ltd., Kuditre, Tal. Karveer, Dist. Kolhapur. PAN: AAAAK0363M	2009-10
8-11	1423/PUN/2011 1424/PUN/2011 1425/PUN/2011 1426/PUN/2011	Manjara Shetkari Sahakari Sakhar Karkhana Ltd., Chincholirao (Wadi), Latur. PAN: AAAAM1527D	DCIT, Spl. Range-2, Aurangabad.	1991-92 1995-96 1998-99 2001-02
12-15	1462/PUN/2011 1463/PUN/2011 1464/PUN/2011 1484/PUN/2011	ACIT, Circle-3, Nanded.	Manjara Shetkari Sahakari Sakhar Karkhana Ltd., Vilasnagar, Chincholirao (Wadi), Dist. Latur. PAN: AAAAM1527D	1991-92 1995-96 1998-99 2001-02
16-17	1437/PUN/2011 647/PUN/2014	Shri Vridheshwar Sahakari Sakhar Karkhana Ltd., A/Post: Vridheshwar Sakhar Karkhana, Tal. Pathardi, Dist. Ahmednagar. PAN: AABCV0782E	DCIT, Ahmednagar Circle, Ahmednagar.	2007-08 2010-11
18	1492/PUN/2011	Kadwa Sahakari Sakhar Karkhana Ltd., Rajaramnagar, Materewadi, Dindori, Nashik.	ACIT, Circle-1, Nashik.	1998-99

		PAN: AAAAK1052K		
19	2600/PUN/2012	Shri Someshwar SSK Ltd., Tal. Baramati, Dist. Pune PAN: AAAAS2034B	DCIT, Circle-6, Pune.	2009-10
20	2562/PUN2012	ITO, Ward-11(3), Pune.	M/s Karmayogi Shankarraoji Patil Sahakari Sakhar Karkhana Ltd., A/P. Mahatma Phule Nagar, Indapur, Tal. Indapur, Dist. Pune PAN: AAAAI0225M	2009-10
21	2122/PUN/2012	Padamshree Dr. Dy. Patil Sahakari Sakhar Karkhana Ltd., Dnyanshantinagar, Tal. Gaganbavada, Dist. Kolhapur. PAN: AAAAS6831N	ACIT, Circle-1, Kolhapur.	2009-10
22-24	2134/PUN/2012 2135/PUN/2012 2135/PUN/2012	DCIT, Circle-1, Kolhapur.	Padamshree Dr. Dy. Patil Sahakari Sakhar Karkhana Ltd., Dnyanshantinagar, Tal. Gaganbavada, Dist. Kolhapur. PAN: AAAAS6831N	2007-08 2008-09 2009-10
25	681/PUN/2014	DCIT, Circle-3, Nanded.	Priyadarshani Shetkari Sahakari Sakhar Karkhana Ltd., Arvind Nagar, Tal. Udgir, Dist. Latur. PAN: AAAAP1262G	2007-08
26-28	1026/PUN/2012 1027/PUN/2012 25/PUN/2013	Yashwant Rao Mohite Krishna SSK Ltd., Shivnagar, Tal. Karad, Dist. Satara. PAN: AAAAK0946L	DCIT, Satara Circle, Satara.	2007-08 2008-09 2009-10

29-30	157/PUN/2013 158/PUN/2013	Appasaheb Nalawade Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd., A/p Harali, Tal. Gadhinglaj, Kolhapur. PAN: AAAAG0574A	ACIT, Circle-1, Kolhapur.	2008-09 2009-10
31	700/PUN/2014	Ashok Sahakari Sakhar Karkhana Ltd., Ashok Nagar, Tal. Shrirampur, Dist. Ahmednagar. PAN: AACCK3452B	ACIT, Circle Ahmednagar, Ahmednagar	2010-11
32	1215/PUN/2014	ACIT, Circle Ahmednagar, Ahmednagar	Ashok Sahakari Sakhar Karkhana Ltd., Ashok Nagar, Tal. Shrirampur, Dist. Ahmednagar. PAN: AACCK3452B	2008-09
33	97/PUN/2015	DCIT, Circle-10, Pune.	Bhima Sahakari Sakhar Karkhana Ltd., Dattatray Nagar, Pargaon BK, Tal. Ambegaon, Dist. Pune. PAN: AAAAB0949G	2008-09
34	2171/PUN/2016	ACIT, Circle-3, Aurangabad.	Ambajogai Sahakari Sakhar Karkhana Ltd., Ambasakhar, Ambajogai, Dist. Beed. PAN: AAAAA1196L	1992-93
35	333/PUN/2012	Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd., At Post. Walwa, Tal. Walwa, Sangali. PAN: AAAAH0391L	DCIT, Circle-2, Sangali.	2007-08
36-38	2124/PUN/2012 608/PUN/2012 609/PUN/2012	ACIT, Circle-2, Sangali.	Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd., At Post. Walwa, Tal. Walwa, Sangali. PAN: AAAAH0391L	2003-04 2007-08 2008-09
39-41	2163/PUN/2012 2164/PUN/2012 2165/PUN/2012	DCIT, Ichalkaranji Circle, Ichalkaranji.	Jawahar Shetkari Sahakari Sakhar Karkhana Ltd.,	2007-08 2008-09 2009-10

			Hupari, Kallappaanna, Awadenagar, Hupari- Yalgud, Tal. Hatkananagle, Dist. Kolhapur. PAN: AAAAJ0571C	
42	1818/PUN/2016	Karmayogi Shankarraoji Patil SSK Ltd., A/p Mahtma Phule Nagar, Tal. Indapur, Dist. Pune. PAN: AAAAI0225N	ITO, Ward- 14(5), Pune.	2012-13
43	874/PUN/2014	Karmveer Shankarrao Kale Sahakari Sakhar Karkhana Ltd., Gautamnagar, Post. Kolpewadi, Tal. Kopargaon, Dist. Ahmednagar. PAN: AAATT3070H	ACIT, Ahmednagar Circle, Ahmednagar.	2010-11
44-45	601/PUN/2012 602/PUN/2012	ACIT, Circle-2, Kolhapur.	Shri Chh. Rajaram Sahakari Sakhar Karkhana Ltd., S.No.69, E Ward, Kasaba Bawada, Kolhapur. PAN: AAAAS4219A	2007-08 2008-09
46	134/PUN/2013	Shri Chh. Rajaram Sahakari Sakhar Karkhana Ltd., S.No.69, E Ward, Kasaba Bawada, Kolhapur. PAN: AAAAS4219A	ACIT, Circle-2, Kolhapur.	2009-10
47	2606/PUN/2012	Shree Sidheshwar SSK Ltd., Tikekarwadi, Tal. North Solapur, Dist. Solapur. PAN: AAAAS3729F	ACIT, Circle-1, Solapur.	2009-10
48-49	42/PUN/2012 43/PUN/2012	Terna Shetkari Sahakari Sakhar Karkhana Ltd., Ternanagar, Dhoki, Dist. Osmanabad. PAN: AAAAT3653M	DCIT, Special Range- 2, Aurangabad.	1992-93 1995-96

50-53	82/PUN/2012 83/PUN/2012 84/PUN/2012 55/PUN/2012	Agasti Sahakari Sakhar Karkhana Ltd., Post. Akole, Tal. Akole, Dist. Ahmednagar. PAN: AAAAA1262B	DCIT, Ahmednagar Circle, Ahmednagar.	1993-94 1998-99 2001-02 2011-12
54-56	136/PUN/2012 137/PUN/2012 138/PUN/2012	Samarth Sahakari Sakhar Karkhana Ltd., Ankushnagar, Tal. Ambad, Dist. Jalana. PAN: N/A	DCIT, Circle-1, Aurangabad.	1992-93 1998-99 1999- 2000
57-59	298/PUN/2012 299/PUN/2012 300/PUN/2012	ACIT, Circle-1, Aurangabad.	Samarth Sahakari Sakhar Karkhana Ltd., Ankushnagar, Tal. Ambad, Dist. Jalana. PAN: N/A	1992-93 1998-99 1999- 2000
60	257/PUN/2012	Shirpur Shetkari Sahakari Sakhar Karkhana Ltd., A/p Shivajinagar, Dahiwad, Tal. Shirpur, Dist. Dhule. PAN: N/A	JCIT, Special Range- 1, Nashik.	1996-97
61	2084/PUN/2012	Shri Chhatrapati Sahakari Sakhar Karkhana Ltd., A/p Bhavaninagar, Tal. Indapur, Dist. Pune. PAN: AAAAS3869G	ACIT, Circle-6, Pune.	2009-10
62	2254/PUN/2012	ACIT, Circle-6, Pune.	Shri Chhatrapati Sahakari Sakhar Karkhana Ltd., A/p Bhavaninagar, Tal. Indapur, Dist. Pune. PAN: AAAAS3869G	2009-10
63	391/PUN/2013	DCIT, Ichalkaranji Circle, Ichalkaranji, Dist. Kolhapur.	Jawahar Shetkari Sahakari Sakhar Karkhana Ltd., Shri Kallappa, Anna, Awadenagar, Hupari, Dist. Kolhapur. PAN: AAAAJ0571C	1998-99
64	1023/PUN/2014	Mula Sahakari Sakhar Karkhana Ltd., At Post. Sonai, Tal. Newasa, Dist.	ACIT, Ahmednagar Circle, Ahmednagar.	2010-11

		Ahmednagar. PAN: AAAAM1145M		
65	804/PUN/2014	Purna Sahakari Sakhar Karkhana Ltd., Basmath Nagar, Tal. Basmath Nagar, Dist. Hingoli. PAN: AAAAP0899B	ACIT, Circle-1, Aurangabad.	2010-11
66	1254/PUN/2014	ACIT, Circle-1, Aurangabad.	Purna Sahakari Sakhar Karkhana Ltd., Basmath Nagar, Tal. Basmath Nagar, Dist. Hingoli. PAN: AAAAP0899B	2010-11
67-70	2293/PUN/2014 2294/PUN/2014 2295/PUN/2014 2296/PUN/2014	DCIT, Circle-10, Pune.	Shri Vighnagar Sahakari Sakhar Karkhana Ltd., Nivruttinagar, Dhalewadi, Tal. Junnar, Dist. Pune. PAN: AAAAS2033G	2003-04 2004-05 2005-06 2006-07
71	2161/PUN/2012	DCIT, Ichalkaranji Circle, Ichalkaranji, Dist. Kolhapur.	Sharad Sahakari Sakhar Karkhana Ltd., Narande, Tal. Hatkanangal, Dist. Kolhapur. PAN: AAFCS3763E	2007-08
72	2594/PUN/2012	ACIT, Ahmednagar Circle, Ahmednagar.	Dnyaneshwar Sahakari Sakhar Karkhana Ltd., Dnyaneshwar Nagar, Bhende (BK), Tal. Newasa, Dist. Ahmednagar. PAN: AAAAS4092H	2009-10
73	1181/PUN/2016	ACIT, Circle-1, Jalgaon.	M/s Madhukar Sahakari Sakhar Karkhana Ltd., Faizpur Karkhana Sight, Faizpur, Yawal, Jalgaon. PAN: AAAAM1574A	2011-12
74	C.O. No.16/PUN/2018	M/s Madhukar Sahakari Sakhar Karkhana Ltd., Faizpur Karkhana	ACIT, Circle-1, Jalgaon.	2011-12

		Sight, Faizpur, Yawal, Jalgaon. PAN: AAAAM1574A		
75	1913/PUN/2016	DCIT, Circle-1, Jalgaon. PAN: AAATC2138H	M/s Chopda Shetkari Sahakari Sakhar Karkhana Ltd., A/p Chahardi, Tal. Chopda, Jalgaon. PAN: AAATC2138H	2011-12
76	2064/PUN/2016	M/s Chopda Shetkari Sahakari Sakhar Karkhana Ltd., A/p Chahardi, Tal. Chopda, Jalgaon. PAN: AAATC2138H	DCIT, Circle-1, Jalgaon.	2011-12
77-80	2283/PUN/2012 730/PUN/2014 731/PUN/2014 732/PUN/2014	Dnyaneshwar Sahakari Sakhar Karkhana Ltd., A/p Dnyaneshwar Nagar, Bhende (BK), Tal. Newasa, Dist. Ahmednagar. PAN: AAAAS4092H	DCIT, Ahmednagar Circle, Ahmednagar.	2009-10 2006-07 2008-09 2010-11
81-83	571/PUN/2011 572/PUN/2011 574/PUN/2011	ACIT, Circle-1, Aurangabad.	Sant Eknath Sahakari Sakhar Karkhana Ltd., Paithan, Dist. Aurangabad. PAN: N/A	1992-93 1999- 2000 1998-99
84-85	1089/PUN/2011 1090/PUN/2011	Mazalgaon Sahakari Sakhar Karkhana Ltd., A/p Sundarnagar, Tal. Telgaon, Dist. Beed. PAN: AAABM0171G	DCIT, Circle-1, Aurangabad.	1995-96 1999- 2000
86	678/PUN/2014	Mazalgaon Sahakari Sakhar Karkhana Ltd., A/p Sundarnagar, Tal. Telgaon, Dist. Beed. PAN: AAABM0171G	ACIT, Circle-2, Aurangabad.	2008-09
87-88	1210/PUN/2011 1211/PUN/2011	ACIT, Circle-2, Aurangabad.	Mazalgaon Sahakari Sakhar Karkhana Ltd., A/p Sundarnagar, Tal. Telgaon, Dist. Beed. PAN: AAABM0171G	1995-96 1999- 2000

89	1418/PUN/2011	Pd. Dr. Vithalrao Vikhe Patil Sahakari Sakhar Karkhana Ltd., At Post. Pravaranagar, Tal. Rahata, Dist. Ahmednagar. PAN: AAAAP0848A	DCIT, Ahmednagar Circle, Ahmednagar	2001-02
90-91	1601/PUN/2011 1602/PUN/2011	M/s Madhukar Sahakari Sakhar Karkhana Ltd., Nhavi Marg, Faizpur, Dist. Jalgaon. PAN: N/A	DCIT, Special Range-1 Nashik.	1994-95 1995-96
92-93	1625/PUN/2011 1626/PUN/2011	DCIT, Special Range-1 Nashik.	M/s Madhukar Sahakari Sakhar Karkhana Ltd., Nhavi Marg, Faizpur, Dist. Jalgaon. PAN: N/A	1994-95 1995-96
94	2451/PUN/2012	ACIT, Circle-1, Nashik.	Kadwa Sahakari Sakhar Karkhana Ltd., Rajamarm Nagar, Materewadi, Dindori, Dist. Nashik. PAN: AAAAK1052F	2009-10
95-96	2530/PUN/2012 2532/PUN/2012	ACIT, Circle-1, Sangli.	Kranti SSK Ltd., A/p Kundal, Tal. Pulas, Dist. Sangli. PAN: AAAAK1277C	2007-08 2009-10

Assessee (s) Represented by Shri Subhadha Koppa
Shri Pratik Sandbhor
Shri Pramod Shingte
Shri K. Srinivasan
Smt. Deepa Khare

None Appeared

Sl.Nos.7, 21-25, 29-30, 34-38, 44-46, 48-49, 75-76, 81-83,

Revenue by

Ms. Nandita Kanchan

Date (s) of hearing

18-03-2019

Date of pronouncement

20-03-2019

आदेश / ORDER**PER BENCH :**

These bunch of appeals by the assesseees and the Revenue for the various assessment years mentioned in the caption are directed against the orders of Commissioner of Income Tax (Appeals). All the assesseees in the present set of appeals are engaged in manufacturing of white sugar. The primary issues raised in these appeals are :

- i. Excess cane price paid by the assesseees to sugarcane suppliers, i.e. the price over and above the Statutory Minimum Price (SMP) fixed by State Government for purchase of cane.
- ii. Addition on account of sale of sugar at concessional rate to the members/shareholders by the assesseees.

Apart from the above two primary issues following issues have also emerged in some of the appeals :

- i. Disallowance of contribution towards Area Development Fund.
- ii. Provision for Vasantdada Sugar Institute (VSI) Contribution.
- iii. Disallowance of Employees Contribution towards PF.
- iv. Addition account of contribution towards Chief Minister relief fund.
- v. Disallowance of interest u/s. 43B.
- vi. Disallowance of Cane Harvesting and Transportation Expenditure.

2. The Ld. Authorised Representatives appearing on behalf of the various assesseees and Ms. Nandita Kanchan representing the Department submitted at the outset that the issues raised in present set of appeals by the assesseees and the Revenue have already been considered and adjudicated by the Co-ordinate Bench of Tribunal in bunch of appeals. The facts and issues raised in present appeals are similar. The Ld. DR furnished copy of order of Tribunal dated 14-03-2019 vide which bunch of 162 appeals were disposed of by the Co-ordinate Bench, the lead case being Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT in ITA No. 308/PUN/2018 for the assessment year 2013-14.

3. After hearing both the sides and after considering the order of Co-ordinate Bench in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra) etc., we observe that the issues raised in the present set of appeals have already been considered and decided by the Co-ordinate Bench.

Excess Cane Price Paid to Sugarcane Suppliers

4. The Co-ordinate Bench after considering the judgment of Hon'ble Supreme Court of India in the case of CIT Vs. Tasgaon Taluka S.S.K. Ltd. reported as 103 taxmann.com 57 has decided this issue as under :

"5. We have heard both the sides and gone through the relevant material on record. There is consensus ad idem between the rival parties that the issue of payment of excessive price on purchase of sugarcane by the assessee is no more res integra in view of the recent judgment of Hon'ble Supreme Court in CIT Vs. Tasgaon Taluka S.S.K. Ltd. (2019) 103 taxmann.com 57 (SC). The Hon'ble Apex Court, vide its judgment dated 05-03-2019, has elaborately dealt with this issue. It recorded the factual matrix that the assessee in that case purchased and crushed sugarcane and paid price for the purchase during crushing seasons 1996-97 and 1997-98, firstly, at the time of purchase of sugarcane and then, later, as per the Mantri Committee advice. It further noted that the production of sugar is

covered by the Essential Commodities Act, 1955 and the Government issued Sugar Cane (Control) Order, 1966, which deals with all aspects of production of sugarcane and sales thereof including the price to be paid to the cane growers. Clause 3 of the Sugar Cane (Control) Order, 1966 authorizes the Government to fix minimum sugarcane price. In addition, the additional sugarcane price is also payable as per clause 5A of the Control Order, 1966. The AO in that case concluded that the difference between the price paid as per clause 3 of the Control Order, 1966 determined by the Central Government and the price determined by the State Government under clause 5A of the Control Order, 1966, was in the nature of 'distribution of profits' and hence not deductible as expenditure. He, therefore, made an addition for such sum paid to members as well as non-members. When the matter finally came up before the Hon'ble Apex Court, it noted that clause 5A was inserted in the year 1974 on the basis of the recommendations made by the Bhargava Commission, which recommended payment of additional price at the end of the season on 50:50 profit sharing basis between the growers and factories, to be worked out in accordance with the Second Schedule to the Control Order, 1966. Their Lordships noted that at the time when additional purchase price is determined/fixed under clause 5A, the accounts are settled and the particulars are provided by the concerned Co-operative Society as to what will be the expenditure and what will be the profit etc. Considering the fact that Statutory Minimum Price (SMP), determined under clause 3 of the Control Order, 1966, which is paid at the beginning of the season, is deductible in the entirety and the difference between SMP determined under clause 3 and SAP/additional purchase price determined under clause 5A, has an element of distribution of profit which cannot be allowed as deduction, the Hon'ble Supreme Court remitted the matter to the file of the AO for considering the modalities and manner in which SAP/additional purchase price/final price is decided. He has been directed to carry out an exercise of considering accounts/balance sheet and the material supplied to the State Government for the purpose of deciding/fixing the final price/additional purchase price/SAP under clause 5A of the Control Order, 1966 and thereafter determine as to what amount would form part of the distribution of profit and the other as deductible expenditure. The relevant findings of the Hon'ble Apex Court are reproduced as under:-

“9.4. Therefore, to the extent of the component of profit which will be a part of the final determination of SAP and/or the final price/additional purchase price fixed under Clause 5A would certainly be and/or said to be an appropriation of profit. However, at the same time, the entire/whole amount of difference between the SMP and the SAP per se cannot be said to be an appropriation of profit. As observed hereinabove, only that part/component of profit, while determining the final price worked out/SAP/additional purchase price would be and/or can be said to be an appropriation of profit and for that an exercise is to be done by the assessing officer by calling upon the assessee to produce the statement of accounts, balance sheet and the material supplied to the State Government for the purpose of deciding/fixing the final price/additional purchase price/SAP under Clause 5A of the Control Order, 1966. Merely because the higher price is paid to

both, members and non-members, qua the members, still the question would remain with respect to the distribution of profit/sharing of the profit. So far as the non-members are concerned, the same can be dealt with and/or considered applying Section 40A (2) of the Act, i.e., the assessing officer on the material on record has to determine whether the amount paid is excessive or unreasonable or not.....

9.5 Therefore, the assessing officer will have to take into account the manner in which the business works, the modalities and manner in which SAP/additional purchase price/final price are decided and to determine what amount would form part of the profit and after undertaking such an exercise whatever is the profit component is to be considered as sharing of profit/distribution of profit and the rest of the amount is to be considered as deductible as expenditure.”

6. Both the sides are unanimously agreeable that the extant issue of deduction for payment of excessive price for purchase of sugarcane, raised in most of the appeals under consideration, is squarely covered by the aforesaid judgment of the Hon’ble Supreme Court. Respectfully following the precedent, we set-aside the impugned orders on this score and remit the matter to the file of the respective A.Os. for deciding it afresh as per law in consonance with the articulation of law by the Hon’ble Supreme Court in the aforesaid judgment. The AO would allow deduction for the price paid under clause 3 of the Sugar Cane (Control) Order, 1966 and then determine the component of distribution of profit embedded in the price paid under clause 5A, by considering the statement of accounts, balance sheet and other relevant material supplied to the State Government for the purpose of deciding/fixing the final price/additional purchase price/SAP under this clause. The amount relatable to the profit component or sharing of profit/distribution of profit paid by the assessee, which would be appropriation of income, will not be allowed as deduction, while the remaining amount, being a charge against the income, will be considered as deductible expenditure. At this stage, it is made clear that the distribution of profits can only be qua the payments made to the members. In so far as the non-members are concerned, the case will be considered afresh by the AO by applying the provisions of section 40A(2) of the Act, as has been held by the Hon’ble Supreme Court supra. Needless to say, the assessee will be allowed a reasonable opportunity of hearing by the AO in such fresh determination of the issue.

7. It is noted that in some of the appeals, the assessees have raised an alternate ground for allowing deduction u/s.80P in respect of the addition.

8. The ld. ARs, in some of the cases, which were represented by them, were fair enough not to press such ground as it is only an alternate ground and having become infructuous in view of the restoration of the matter to the AO. No argument was advanced in support of such ground in other cases, even where the ld. ARs participated in proceedings before the Tribunal. Therefore, the said alternate ground in all such cases is dismissed.”

5. Thus, in view of the statement made by both the sides that the facts in the present set of appeals are identical, the issue relating to excess sugarcane price paid by the assessee is restored to the file of Assessing Officer with similar directions as above in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra). The Assessing Officer shall decide the issue after affording reasonable opportunity of hearing to the respective assesseees, in accordance with law.

Sale of Sugar at Concessional rates to the Members/Shareholders

6. The Ld. DR submitted that this issue was decided by the Hon'ble Apex Court in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Limited reported as 27 taxmann.com 162. In the present bunch of appeals where the issue has been raised, either the orders were passed by the Commissioner of Income Tax (Appeals) prior to the date of judgment of Hon'ble Supreme Court of India in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Limited (supra) i.e. 25-09-2012 and in some cases where the orders have been passed by the Commissioner of Income Tax (Appeals) subsequent to the date of said judgment, the Commissioner of Income Tax (Appeals) has not considered the judgment rendered by the Hon'ble Apex Court on this issue.

7. We find that the issue of sale of sugar at concessional rates has also been considered by the Co-ordinate Bench in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra) and has held as under :

“11. Having heard both the sides and gone through the relevant material on record, it is observed that the AO made addition of the difference between the market price and the concessional price at which sugar (final product) was given to farmers and cane growers. In this regard, it is observed that this issue has been considered by the Hon’ble Supreme Court in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Limited (2012) 27 taxmann.com 162 (SC). Vide judgment dated 25-09-2012, the Hon’ble Supreme Court noticed that the difference between the average price of sugar sold in the market and the price of sugar sold by the assessee to its members at concessional rate was taxed by the Department under the head “Appropriation of profit”. The Hon’ble Summit Court remitted the matter to the CIT(A) for considering, inter alia,: “whether the abovementioned practice of selling sugar at concessional rate has become the practice or custom in the Co-operative sugar industry?; and whether any Resolution has been passed by the State Government supporting the practice?; The CIT(A) would also consider on what basis the quantity of the final product, i.e. sugar, is being fixed for sale to farmers/cane growers/Members each year on month-to-month basis, apart from others from Diwali?” The issue under consideration can be decided by an appropriate lower authority only on the touchstone of the relevant factors noted in the above judgment. In our considered opinion, it would be just and fair if the impugned orders on this score are set aside and the matter is restored to the file of AOs, instead of to the CITs(A), for fresh consideration as to whether the difference between the average price of sugar sold in the market and that sold to members at concessional rate is appropriation of profit or not, in the light of the directions given by the Hon’ble Supreme Court in the case of Krishna Sahakari Sakhar Karkhana Limited (supra). Restoration to the AO is necessitated because, following the judgment of the Hon’ble Apex Court in the case of Tasgaon Taluka S.S.K. Ltd. (supra), we have remitted the issue of payment of excessive price to the file of AO, and as such, the instant issue cannot be sent to Id. CIT(A) as it would amount to simultaneously sending one part of the same assessment order to the AO and other to the CIT(A), which is not appropriate. We order accordingly.”

8. Both the sides have stated at the Bar that the issue raised in present set of appeals are identical to the one already decided by the Co-ordinate Bench. Thus, in view of the above order by Co-ordinate Bench this issue is restored back to the file of Assessing Officer for de-novo adjudication in similar terms. The Assessing Officer shall grant reasonable opportunity of hearing to the assessee, in accordance with law.

Disallowance of contribution to Area Development Fund

9. We find that the Co-ordinate Bench has considered this issue and has restored the same to the file of Assessing Officer by observing as under :

“13. Having heard both the sides and gone through the relevant material on record, it is seen that similar issue came up for consideration before the Hon’ble Supreme Court in the case of Siddheshwar Sahakari Sakhar Karkhana Limited Vs. CIT and others (2004) 270 ITR 1 (SC). In that case, the Hon’ble Supreme Court observed in para 44 that the receipts in the form of Area Development Fund always remained with the assessee. It also noted the contention of the assessee in para 45 that the realisations made towards the Area Development Fund were impressed with the specific legal obligation to spend the money for specified purposes which were unrelated to the business of the sugar factory and hence, could not be treated as income of the assessee. Eventually, the Hon’ble Supreme Court remitted the matter back for fresh determination. It is noticed that in the appeals under consideration, the Id. CITs(A) have not considered the impact of the judgment of the Hon’ble Supreme Court in Siddheshwar Sahakari Sakhar Karkhana Limited (supra) and decided the issue without taking note of the factors directed to be considered in the aforementioned case. In view of the above decision of Hon’ble Supreme Court, we set-aside such impugned orders and remit the matter to the file of the respective AOs for deciding the issue afresh in conformity with the guidelines laid down by the Hon’ble Apex Court in the above judgment.”

10. Both the sides are unanimous in stating that the issue in present set of appeals is identical to the one already decided by the Co-ordinate Bench. Thus, in view of the order by Co-ordinate Bench this issue is decided in the same terms. Accordingly, the issue is restored back to the file of Assessing Officer. The Assessing Officer shall grant reasonable opportunity of hearing to the assessee, in accordance with law.

Provision for Vasantdada Sugar Institute (VSI) Contribution

11. The Authorised Representatives submitted that the issue of provision for VSI contribution has been decided by the Co-ordinate

Bench in favour of the assesseees by following the order of Tribunal in the case of Bhima S.S.K. Ltd. in ITA No. 1414/PUN/2000. The ld. DR fairly admitted that this issue has been considered by the Co-ordinate Bench. The Co-ordinate Bench while deciding this issue in favour of assesseees has observed as under :

“18. We have heard both the sides and gone through the relevant material on record. It is found that the ld. CIT(A) has determined this issue in favour of the assessee by following the order passed by the Pune Benches of the Tribunal in the case of Bhima S.S.K. Ltd. (supra). No material has been placed on record to show that this order of the Tribunal has been reversed or modified in any manner by the Hon’ble High Court. Respectfully following the precedent, we decide this issue in favour of the assessee.”

12. Thus, in view of the above findings of the Tribunal and submissions of both the sides, the issue is decided in favour of the assessee.

Disallowance of Employees contribution towards Provident Fund

13. Another issue in some of the appeals is disallowance of contribution towards Provident Fund after the statutory time but before the due date of filing return of income. The Ld. Authorised Representatives submitted that admittedly there was delay in deposit of contribution towards Provident Fund but the amount was deposited before due date of filing return of income by the respective assesseees. This issue has been settled by the Hon’ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Alom Extrusions Ltd. reported as 319 ITR 306.

14. The assessee's eligibility to claim deduction of delayed deposit of employees share in Provident Fund scheme but before due date of filing return of income is no more *res integra*. The Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Ghatge Patil Transports Ltd. reported as 368 ITR 749 after considering the judgment in the case of Commissioner of Income Tax Vs. Alom Extrusions Ltd. (supra) held that deduction to be allowed only on actual payments before the due date of filing return of income and the amended provisions of section 43B applies to both employee's and employer's contribution. In the present set of appeals it is not disputed by the Revenue that the contribution was made before the due date of filing return of income. Thus, in view of well settled law and the facts of the case, this issue is decided in favour of the assessee.

Disallowance of Contribution towards Chief Minister Fund

15. Another issue in some of the appeals is disallowance of contribution by assessee towards Chief Minister relief fund. We find that this issue has been considered by Co-ordinate Bench in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra) and has held as under :

"21. We have heard both the sides and gone through the relevant material on record. There is no dispute that the assessee did make contribution to the Chief Minister Relief Fund. As against the assessee claiming the entire amount as deduction in its Profit and loss account, the AO opined that the said contribution was eligible for deduction u/s. 80G(iiihf) of the Act at the rate of 50% along with other qualifying sums. The ld. CIT(A) sustained the entire addition overlooking the fact that deduction u/s.80G(iiihf) was not allowed by the AO on such contribution in the computation of total income. Under these circumstances, we cannot uphold the disallowance of the entire amount claimed as deduction by the assessee in its Profit and loss account. Approving the additions made, we remit the matter to the file of the AO for granting the deduction

u/s.80G(iiihf) as per law after allowing a reasonable opportunity of hearing to the assessee.”

16. It is an undisputed fact that the issue in the present set of appeals is identical. Thus, following the order of Co-ordinate Bench, the issue is restored to the file of Assessing Officer to be adjudicated in similar terms. The issue is allowed for statistical purpose.

Disallowance of Interest on Loans u/s. 43B

17. The Ld. Authorized Representatives submitted that disallowance u/s. 43B is in respect of interest paid to the banks and financial institutions. In the present case, the loans have been made available by the Government. The banks/financial institutions were only mode of disbursing loans to the sugar karkhana, the provisions of section 43B are not attracted.

On the other hand ld. DR vehemently supported the findings of Assessing Officer on this issue.

18. A perusal of impugned order shows that the Commissioner of Income Tax (Appeals) has granted relief to the assessee after placing reliance of Government Resolution bearing No. 1004/380/No.99/13-5 dated 20-05-2004. The said resolution is in connection with mid term loan granted to the sugar factories at interest rate of 2% per annum. The loan has been provided by the Government and has been disbursed through banks/financial institutions. This fact has not been disputed by the Revenue. It is not a case where the loans have been granted to the sugar factories by the banks/financial institutions. Thus, in the peculiar

facts of the case we concur with the findings of Commissioner of Income Tax (Appeals) in holding that the provisions of section 43B are not attracted. We confirm the findings of Commissioner of Income Tax (Appeals) on this issue. Consequently, the issue is decided in favour of the assesseees.

Harvesting and Transportation Expenditure

19. In some of the appeals the issue of disallowance of cane harvesting and transportation expenditure incurred by the assesseees has been raised. The expenditure has been disallowed by the Assessing Officer. We find that this issue is squarely covered in favour of the assesseees by CBDT Circular No. 6/2007, dated 11-10-2007. For the sake of ready reference the same is reproduced here-in-below :

“1. Instances have come to the notice of the Board wherein Assessing Officers have disallowed the claim of harvesting and transportation expenses incurred by the Co-operative sugar mills for procuring sugarcane from farmers, who are members of such Co-operative Sugar Mills and who are bound under an agreement to supply the sugarcane exclusively to the concerned sugar Mill.

2. The issue of allowability of such expenses in the case of Co-operative Sugar Mills has been examined by the Board. These expenses are incurred by the Sugar Mills for ensuring an adequate and sustained supply of freshly cut sugarcane that is an essential input for the continuous running of such Mills. These expenses are, therefore; incurred for a commercial expediency and are prima facie wholly and exclusively for the purpose of business. Such expenses are, therefore, allowable in the computation of the income of the Co-operative Sugar Mills.”

Thus, in view of CBDT Circular the harvesting and transportation expenditure are allowable. Consequently, the issue is decided in favour of the assesseees.

20. In the result, the appeals are allowed/partly allowed for statistical purpose in the manner aforesaid as the case may be.

Order pronounced on Wednesday, the 20th day of March, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th March, 2019.
RK/SUJEET

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

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

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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