

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

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 911/PUN/2017

निर्धारण वर्ष / Assessment Year: 2012-13

Ajara Shetkari Sahakari Sakhar
Karkhana Ltd.
15/34, A/P Gavase, Tal. Ajara,
Dist. Kolhapur.
PAN : AAAAAA0496R

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 1(3), Kolhapur.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 912/PUN/2017

निर्धारण वर्ष / Assessment Year: 2013-14

Ajara Shetkari Sahakari Sakhar
Karkhana Ltd.
15/34, A/P Gavase, Tal. Ajara,
Dist. Kolhapur.
PAN : AAAAAA0496R

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-1, Kolhapur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni

Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 29.04.2019
घोषणा की तारीख / Date of Pronouncement : 29.04.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

These two appeals preferred by the assessee emanates from the orders of the Ld. CIT(Appeals)-1, Kolhapur dated 31.01.2017 and 19.01.2017 respectively for the assessment years 2012-13 and 2013-14 as per grounds of appeal on record.

2. At the time of hearing, the Ld. AR of the assessee submitted at the outset that the issue raised in the present appeal is squarely covered by the decision of the Pune Bench of the Tribunal in SSK Group Cases taking the case of Majalgaon Sahakari Sakhar Karkhana Limited Vs. ACIT, Circle-3, Aurangabad – ITA No.308/PUN/2018 for the assessment year 2013-14 as lead case.

3. The Ld. DR conceded to the submissions of the Ld. AR of the assessee.

4. We have perused the case records and heard the rival contentions. We have also considered the decision of the Pune Bench of the Tribunal in SSK Group Cases taking the case of Majalgaon Sahakari Sakhar Karkhana Limited Vs. ACIT, Circle-3, Aurangabad – ITA No.308/PUN/2018 for the assessment year 2013-14 as lead case wherein appeals of the assesses are fully/partly allowed by the Tribunal by observing as under:

“II. ADDITION FOR SUGAR GIVEN TO MEMBERS AT CONCESSIONAL RATES – [Appeals in which Krishna Sahakari Sakhar Karkhana Limited (SC) not considered by lower authorities]

10. In some of the appeals, there is another issue of giving sugar to members at concessional rates. Such ground is against the disallowance on account of price difference on certain quantity of sugar given to the members at concessional rate.

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.

III. DISALLOWANCE OF CONTRIBUTION TO AREA DEVELOPMENT FUND

12. Another issue in some of the appeals is against the deletion/confirmation of disallowance made by the AO on account of Area Development Fund.

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 ld. 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.

IV. DISALLOWANCE FOR LATE DEPOSIT OF EMPLOYEES' SHARE IN EPF ETC.

14. *Another issue in some of the appeals is against the confirmation of disallowance for delayed deposit of ESI / EPF employees' share. During the course of assessment proceedings, it was noticed that the assessee belatedly deposited the amount of employees' contribution towards EPF and ESI. The details of due dates and actual payments have been set out in the respective assessment orders. The AO, therefore, made such disallowance, which came to be affirmed in the first appeal.*

15. *We have heard the rival submissions and perused the relevant material on record. It is found that the issue raised herein is no more res integra. The Hon'ble Apex Court in the case of CIT v. Alom Extrusions Limited (2009) 319 ITR 306 (SC) has held that the amendment to first proviso and omission of the second proviso to section 43B by the Finance Act, 2003, is retrospective. The Hon'ble Delhi High Court in the case of CIT v. Aimil Limited (2010) 321 ITR 508 (Delhi) has allowed deduction in respect of employees' share when the amount was paid before the due date. When we consider these two judgments, it is manifested that both the employer's and employees' contribution are allowable as deduction if these are deposited albeit belatedly under the respective Acts, but before the due date of filing of return u/s 139(1) of the Act.*

16. *It is seen as an admitted position that the assessees in such cases deposited the employees' contribution towards EPF and ESIC before the due date u/s 139(1) of the Act. Respectfully following the aforementioned judgment of the Hon'ble Delhi High Court, we order for the deletion of the addition sustained in the first appeals on account of late deposit of employees' contribution to the Provident fund.*

V. PROVISION FOR VASANTDADA SUGAR INSTITUTE (VSI) CONTRIBUTION :

17. *Another issue raised in some of the appeals is against the confirmation of disallowance of contribution to Vasantdada Sugar Institute (VSI). The AO observed that the assessee made provision for Vasantdada Sugar Institute (VSI) contribution and claimed weighted deduction at 125% u/s.35(1)(ii) of the Act. The said amount was not paid to the institute. The same being only in the nature of provision, the AO did not allow deduction u/s.35(1)(ii). The ld. CIT(A) decided this issue in favour of the assessee by following an order passed by the Pune Benches of the Tribunal in the case of Bhima S.S.K. Ltd. (ITA No.1414/PUN/2000).*

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.

VI. CONTRIBUTION TO CHIEF MINISTER RELIEF FUND :

19. *Another issue raised in some of the appeals is against the confirmation of addition on account of contribution made to Chief Minister Relief Fund.*

20. *The assessee contributed certain amount in the Chief Minister Relief Fund and claimed deduction for the same in its Profit and loss account. The AO observed that this fund established by the State Government is covered u/s.80G(iiihf) of the Act and, as such, the contribution is deductible at 50% of the aggregate of the sums specified. He, therefore, disallowed the amount, which action came to be countenanced in the first appeal.*

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 Id. 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.*

VII. KHODKI CHARGES

22. *Another issue raised in some of the appeals is against non-granting of deduction towards payment of Khodki charges. On being called upon to justify such deduction, the assessee submitted that this payment was made as per the order of the Director of Sugar. It was further explained that at the time of harvesting, the harvesting labour cut more part of the upper side of the crop and therefore, to compensate loss in weight to the grower, the said Khodki charges were paid to the farmers. The AO was not satisfied with the explanation tendered on behalf of the assessee. He noted that the Commissioner of Sugar, on behalf of Government of Maharashtra, was issuing directions for payment of Khodki charges only on the basis of proposal sent by the respective assessees. The Id. CIT(A) deleted the addition by relying on the judgment of Hon'ble Bombay High Court in CIT Vs. Manjara Shetkari SSK Ltd. and others (2008) 301 ITR 191 (Bom.), against which the Revenue has come up in appeal before the Tribunal.*

23. *We have heard both the sides and gone through the relevant material on record. It is seen that Khodki charges were incurred as per the*

directions of the Director of Sugar to compensate for the farmers' loss for unevenly cutting of cane sugar at the time of harvesting. This issue came up for consideration before the Special Bench of the Tribunal in DCIT Vs. Manjara Shetkari SSK Ltd. (2004) 85 TTJ (Mum.)(SB) 369, which granted deduction for said expenses. On further appeal by the Revenue to the Hon'ble Bombay High Court, their Lordships in the aforementioned case approved the view taken by the Tribunal allowing deduction for payment of such Khodki charges. The ld. CIT(A) has recorded that the SLP filed by the Department in the case of Jadamba SSK Ltd., on similar issue, has been dismissed by the Hon'ble Supreme Court on 23-03-2009. In view of the fact that Khodki charges have been held as deductible by the Hon'ble jurisdictional High Court and the recent judgment of Hon'ble Supreme Court in Tasgaon Taluka Sahakari Sakhar Karkhana Ltd. (supra) does not cover Khodki charges, we hold that this issue needs to be decided in favour of the assessee.

VIII. DEDUCTION u/s.80P ON INTEREST AND DIVIDEND

24. *In some of the appeals the issue of deduction under section 80P of the Act on interest and dividend income is also involved. The assessee claimed deduction u/s.80P(2)(d) of the Act on interest and dividend received from Co-operative Society on Savings Bank accounts. The AO did not allow such deduction. The ld. CIT(A) overturned the assessment order on this point and granted deduction. The Revenue is aggrieved by such allowing of deduction.*

25. *We have heard both the sides and gone through the relevant material on record. Relevant part of section 80P reads as under :-*

"80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) to (c)

(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operative society, the whole of such income;

....."

26. *A cursory look of the above provision deciphers that any amount of interest or dividend derived by a Co-operative Society from its investments with any other Co-operative Society, is deductible under clause (d) of section 80P(2) of the Act. The ld. CIT(A) has given a categorical finding that assessee is a Co-operative Society and the Co-operative Bank from which the above-mentioned income was earned, is also a Co-operative Society duly registered under Maharashtra Cooperative Societies Act. This contention has not been controverted by the ld. DR with any cogent material or evidence. Thus, it is seen that the case of the assessee is fully covered u/s.80P(2)(d) of the Act. Reliance of the AO on the provisions of sub-section (4) of section 80P is misplaced. Such provision states that : `*

The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.' As the assessee under consideration is not a Co-operative Bank, the mandate of sub-section (4) does not extend to it. We, therefore, approve the view taken by the ld. CIT(A) in granting deduction u/s.80P(2)(d) of the Act in respect of interest and dividend income earned by the assessee on such facts.

27. In the result, all the appeals are fully/partly allowed for statistical purposes."

In view of above, we find that the issues raised in both the appeal are covered by the decision of Pune Bench of the Tribunal. Respectfully, following our decision, the appeals filed by the assessee are fully/partly allowed for statistical purposes.

5. In the result, both the appeals of the assessee are fully/partly allowed for statistical purposes.

Order pronounced on 29th day of April, 2019.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th April, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal)-1, Kolhapur.
4. The Pr. CIT-1, 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.

		Date	
1	Draft dictated on	29.04.2019	Sr.PS/PS
2	Draft placed before author	29.04.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		