

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं / ITA No.2170/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Asst.Commissioner of Income Tax,
Circle – 1, Kolhapur.

..... अपीलार्थी /
Appellant

बनाम v/s

Shri Warana Sahakari Dudh Utpadak
Prakriya Sangh Ltd.,
942/B, Tatyasaheb, Korenagar,
A/p, Warnanagar,
Tal – Panhala, Kolhapur.

..... प्रत्यर्थी /
Respondent

PAN : AAABS0290E.

Assessee by : Shri M.K. Kulkarni

Revenue by : Shri Vishwas Mundhe.

सुनवाई की तारीख / Date of Hearing : 26.06.2019	घोषणा की तारीख / Date of Pronouncement: 12.07.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) – 1, Kolhapur dated 14.07.2016 for the assessment year 2012-13.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Co-operative Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and

engaged in the business of procurement of milk and manufacturing of milk products. Assessee electronically filed its return of income for A.Y. 2012-13 on 29.09.2012 declaring loss of Rs.4,04,70,349/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.09.03.2015 and the total income was determined at Rs.1,39,56,190/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.14.07.2016 (in appeal No.KOP/12/15-16) decided the appeal in favour of assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

“1. On the facts and in the circumstances of the case and in law, whether the learned CIT (Appeals) was justified in deleting the addition of Rs. 2,35,60,695/- made on account of distribution of profit in the grab of payment of additional price for purchase of milk?”

2) On the facts and in the circumstances of the case and in law, whether the learned CIT (Appeals) was correct in appreciating the fact that additional purchase price was paid only to the members of the society after determination of profit earned by the assessee society at the end of the financial year, which amounts to distribution of profits in terms of bye-laws of the assessee society?”

3. Both the grounds being inter-connected are considered together.

4. During the course of assessment proceedings, AO noticed that assessee had debited Rs.2,35,60,695/- on account of milk rate difference. The assessee was asked to explain the claim of its allowability. To the query of AO, assessee submitted that it had paid to the members of the assessee society excess price to induce them to supply the maximum milk to the assessee society for the purpose of its business. It was further submitted that the issue has been decided in assessee's favour by the Hon'ble Bombay High Court. The submissions of the assessee were not found acceptable to the AO in view of the fact

that against the order of Hon'ble Mumbai High Court, Department had filed Special Leave Petition before the Hon'ble Apex Court. AO therefore disallowed excess milk price of Rs.2,35,60,695/- u/s 37(1) of the Act and made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who decided the issue in assessee's favour by observing as under :

"4. During the course of assessment proceedings, the assessing officer noticed that the appellant had debited an amount of Rs. 2,35,60,695/- as milk rate difference in its profit and loss account. In this connection the appellant explained before the assessing officer that the said sum was paid to members of the appellant society to induce them to supply the maximum milk to the appellant and therefore, the above amount was for the purposes of its business. Not accepting the contentions of the appellant, the assessing officer proceeded to disallow the sum of Rs.2,35,60,695/ - as excess milk price.

5. Before me, the appellant contended that the society fixed a rate for purchase of milk in lean period and flush period which is paid to milk suppliers at interval of 10 days. A higher rate per liter is fixed and paid at the end of the year taking into consideration the rates given by other society and private dairies. The amount of milk rate difference was fixed by the Board of Directors and a provision for the same was made in the books as on 31st March by debiting the same to milk purchase account and crediting it to milk bills payable account. Therefore, it was contended that since milk rate difference was paid as a part of purchase of milk it was purely business expenditure.

*6. I have considered the appellant's submission. I find that this ground is squarely covered in favour of the assessee by the honourable Bombay High Court in the case of CIT V/s Solapur Dist. Co-op. Milk Producers and Process Union Ltd. reported in (2009) 180 Taxman 533 (BOM) and also in the appellant's own case for assessment year 2004-05 and earlier assessment years. Thus, respectfully following the above decisions, the addition made on account of milk rate difference is deleted for the year under appeal. In view of the above, the **ground** of appeal is **allowed**.*

8. It is pertinent to note that the assessing officer has mentioned in the assessment order that he was not following the decision of honourable Bombay High Court judgment (supra) on the ground that the decision of Hon'ble Bombay High Court (Supra) has not been accepted by the Department and SLP has been filed before Hon'ble Supreme Court, which is pending. In other words, the addition has been made simply to keep the issue alive."

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

5. Before us, Ld. D.R. supported the order of AO. Ld. A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and further submitted that identical issue was raised by the Department in assessee's own case in A.Ys. 2007-08, 2009-10 and 2011-12 in ITA Nos.1094 to 1096/PUN/2016 order dt.17.08.2018 wherein the Co-ordinate Bench of the Tribunal has remitted the issue back to the file of Ld.CIT(A) to examine the issue in the light of the ratio of the Hon'ble Apex Court in assessee's own case. He pointed to the relevant findings. He also placed on record the copy of the aforesaid decision. He thus supported the order of Ld.CIT(A).

6. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to the addition on account of higher milk price paid by the assessee. We find that identical issue was raised by the Department in assessee's own case in A.Ys. 2007-08, 2009-10 and 2011-12 in ITA Nos.1094 to 1096/PUN/2016 order dt.17.08.2018 wherein the Co-ordinate Bench of the Tribunal has remitted the issue back to the file of Ld.CIT(A) to decide the issue with the directions contained therein. The relevant observations of ITAT are as under :

"5. We heard both the sides and perused the orders of the Revenue and the judgment of Hon'ble Supreme Court dated 23-08-2011 in the assessee's own case remanding the issue to the file of CIT(A). On perusing the facts of the case, we find the said judgment of Hon'ble Apex Court dated 23-08-2011 was not referred by the assessee while adjudication of the issue before the CIT(A). CIT(A) passed the order on 07-03-2016. Considering the judgment of Hon'ble Apex Court in assessee's own case, which was not considered at all, we are of the opinion that the issue should be referred back to the file of CIT(A) as requested by the Ld. Counsel for the assessee. CIT(A) is directed to examine the issue and the peculiar facts of the present case and apply the ratio laid down by the Hon'ble Apex Court dated 23-08-2011 in the assessee's own case as well as the jurisdictional High Court judgment in the case of CIT Vs. Solapur

District Co-op. Milk Producers & Process Union Ltd. (supra). CIT(A) shall grant reasonable opportunity of being heard to the assessee while adjudicating the 3 appeals filed by the Revenue. Accordingly, the grounds/additional grounds raised by the Revenue are allowed for statistical purposes.”

7. Before us, since both the parties have admitted that the facts in the year under appeal are identical to the facts in the case of ITA Nos.1094 to 1096/PUN/2016 in A.Ys. 2007-08, 2009-10 and 2011-12 (supra) filed by the Revenue in assessee’s own case, we therefore following the order of Co-ordinate Bench of the Tribunal in assessee’s own case in ITA Nos.1094 to 1096/PUN/2016 (supra) and for similar reasons, restore the issue back to the file of Ld.CIT(A) with similar directions. Needless to state that Ld.CIT(A) shall grant adequate opportunity of hearing to the assessee. Assessee is also directed to promptly furnish all the details called for by the lower authorities. In view of our decision to restore the issue to Ld.CIT(A), we are not adjudicating on merits the grounds of the appeal raised by the Revenue. **Thus, the grounds of the Revenue are allowed for statistical purposes.**

8. **In the result, the appeal of Revenue is allowed for statistical purposes.**

Order pronounced on the 12th day of July, 2019.

Sd/-
(**PARTHA SARATHI CHAUDHURY**)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(**ANIL CHATURVEDI**)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 12th July, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1, Kolhapur.
4. CIT-1, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR,
ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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