

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1820/PUN/2017

निर्धारण वर्ष / Assessment Year : 2014-15

Kukadi Sahakari Sakhar Karkhana Ltd.,
M/s. Kadam & Co.,
Vednat 8/9, Viraj Estate,
Opp. Tarakpur Bus Stand,
Ahmednagar – 414003

.... अपीलार्थी/Appellant

PAN: AAATK3702B

Vs.

The Asst. Commissioner of Income Tax,
Ahmednagar Circle, Ahmednagar

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Mrs. Nandita Kanchan

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| सुनवाई की तारीख / Date of Hearing : 18.07.2019 | घोषणा की तारीख / Date of Pronouncement: 01.08.2019 |
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-2, Pune, dated 13.04.2017 relating to assessment year 2014-15 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

- 1) *On the facts and in the circumstances of the case the Hon' Commissioner of Income Tax (Appeal) has erred in not allowing the cane purchase price actually paid by the appellant and allowing the deduction for cane purchase price only equal to Fair and Remunerative Price (FRP) and by holding that excess payment of Rs.75911431/- constitutes distribution of profit thereby confirming the addition made by the A.O.*

2) *On the facts and in the circumstances of the case the Hon' Commissioner of Income Tax (Appeal) has erred in confirming the addition of Rs.881463 made by the A.O. by holding that the sale of sugar at concessional rate to members is appropriation of profit and in the nature of application of income of the appellant society.*

3. Despite service of notice, none appeared on behalf of assessee nor any application was moved for adjournment. However, after rising of Bench, the assessee has filed written submissions which are placed on record.

4. The first issue which is raised in the present appeal is against excess cane purchase price, wherein the issue to be seen is whether the assessee has paid Fair and Remunerative Price (FRP) and there is no excess payment on account of sugarcane price.

5. We find that the said issue is squarely covered by order of Tribunal in bunch of appeals with lead order in the case of Siddheshwar Sahakari Sakhar Karkhana Ltd. Vs. DCIT in ITA No.1210/PUN/1997, relating to assessment year 1992-93, order dated 01.05.2019. The Tribunal has set aside the issue of Excess Cane Price to the file of Assessing Officer to follow the guidelines issued by the Hon'ble Apex Court in CIT Vs. Tasgaon Taluka S.S.K. Ltd. and others in Civil Appeal No.8890 of 2012, judgment dated 05.03.2019. Further in respect of Fair and Remunerative Price (FRP) it was held as under:-

"22. However, after assessment year 2009-10, the scenario of payment of cane price to the farmers has undergone change and the distribution is on the basis of Fair and Remunerative Price, which was different from SMP. The Control Order, 1966 and the working of SAP under clause 5A of the said order does not govern the payment of cane price to the farmers after assessment year 2009-10. In such scenario, the Assessing Officer is directed to re-look into the claim of assessee as per amended guidelines issued in this regard and decide the allowability of said expenditure in the hands of S.S.K. group. Since the SMP factor is not the basis for allowing the said expenditure, it would be difficult to calculate the additional purchase price under clause 5A of Control Order, 1966. Accordingly, in the present bunch of appeals, we remit this issue of deductibility of excess cane price to the file of Assessing Officer with necessary directions to apply the ratio laid down by the Hon'ble Supreme Court in the years to which it is so applicable and for the balance years i.e. after the modification of the Rules from assessment year 2009-10, to consider the

changed guidelines and decide the same after allowing reasonable opportunity of hearing to the assessee.

23. *It is contended by the learned Counsels before us that in addition to the issue before the Hon'ble Supreme Court in respect of excess cane price, there are in some cases, sugarcane was purchased on contracted rates / price out of area of operations. It was pointed out by them that this issue was not considered by the Hon'ble Supreme Court but the said deduction is to be allowed in the hands of assessee, which admittedly, is not covered by SMP price. Since the matter has been set aside to the file of Assessing Officer, then in the hands of relevant assessee, this issue may be looked into by the Assessing Officer. It was pointed out that in such cases, SMP would not have any role to pay. Consequently, such appeals are not governed by the ratio laid down by the Hon'ble Supreme Court in CIT Vs. Tasgaon Taluka S.S.K. Ltd. and others (supra). The Assessing Officer is directed to decide the issue after allowing reasonable opportunity of hearing to assessee."*

6. Following the same parity of reasoning, the first issue is set aside to the file of Assessing Officer. Thus, the ground of appeal No.1 is allowed.

7. The second issue which is raised in the present appeal is against addition made on account of sale of sugar at concessional rates to members, wherein the Assessing Officer has held it to be appropriation of profit.

8. We find that similar issue arose before the Tribunal in the case of Sanjivani (Takli) SSK Ltd. Vs. DCIT in ITA No.987/PUN/2014 and cross appeal in ITA No.1221/PUN/2014, relating to assessment year 2006-07, wherein the Tribunal vide order dated 24.05.2019, has remitted back the issue to the file of Assessing Officer with necessary directions. The relevant findings of Tribunal are as under:-

*"14. On the second issue of **sale of sugar at concessional rate**, the directions of the Hon'ble Supreme Court in the case of Krishna SSK Ltd. (supra), assumes significance and relevance. The CIT(A) although referred to the said judgment when the same is brought to the notice of the CIT(A). So far as the directions given by the Hon'ble Supreme Court is concerned, there is no finding of the CIT(A) on the directions as adjudicated by us in many of the similar cases of SSK group. In view of the direction of the Hon'ble Supreme Court in the case of Krishna SSK Ltd. (supra), the issue of sale of sugar at concessional rate should be remanded to the file of CIT(A). However, in bunch of appeals [Majalgaon Sahakari Sakhar Karkhana Ltd. (supra)], the issue relating to the taxability of the excess sugar cane price is already remanded to the file of the Assessing Officer by the Co-ordinate Bench. Therefore, for avoiding the multiplicity of the proceedings at different level of the Department, we find the issue of sale of sugar at concessional price should also be*

remanded to the file of the Assessing Officer for complying with the directions of the Hon'ble Supreme Court in the case of Krishna SSK Ltd. (supra). Accordingly, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee. Thus, the grounds on merits relating to two issues raised by the assessee and the Revenue stand allowed for statistical purposes."

9. Following the same parity of reasoning, we hold that the issue needs to be revisited by the Assessing Officer and we remit the same to the file of Assessing Officer, who shall determine the first aspect of the case that whether any income chargeable in the hands of assessee and determine the quantum of income to be charged. Reasonable opportunity of hearing to the assessee shall be provided by the Assessing Officer in this regard. The ground of appeal No.2 raised by assessee is thus, allowed as indicated above.

10. In the result, the appeal of assessee is allowed as indicated above.

Order pronounced on this 1st day of August, 2019.

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

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 1st August, 2019.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Pune;
4. The Pr.CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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