आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER AND SHRI O. P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.1205/Ahd/2017	**निर्धारणवर्ष/A.Y.:2013-14**

Shree Chalthan Vibhag Khand UdyogSahkari Mandli Ltd., At & Post Chalthan, Taluka- Palsana, District-Surat **PAN: AAAAC 0477A**	**Vs.**	**Income Tax Officer, Ward-1, Bardoli**
अपीलार्थी Appellant		**प्रत्यर्थी/Respondent**

निर्धारितीकीओरसे **/Assessee by**	**Shri Mitish S. Modi, CA**
राजस्वकीओरसे **/Revenue by**	**Shri Prasenjit Singh, CIT(D.R.)**

सुनवाईकीतारीख/ Date of hearing:	18.07.2019
उद्घोषणाकीतारीख/Pronouncement on:	19.07.2019

आदेश /O R D E R

PER O. P. MEENA, ACCOUTANT MEMBER:

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-1, Surat (in short "the CIT (A)") dated 28.02.2017pertaining to Assessment Year 2013-14, which in turn has arisen from the assessment order passed under section 143 (3) dated 23.02.2016 of Income Tax Act,1961 (in short 'the Act') by the Income Tax Officer, Ward-1, Bardoli (in short "the AO").

2. The grounds of appeal raised by the assessee are as under:

(1) The CIT (Appeals) erred in upholding the Assessing Officer`s disallowance of Rs. 106,15,63,160/- from total sale price paid to the sugarcane growers for the supply of sugarcane.

(2) The CIT (A) erred in holding that the above amount being the excess over FRP is inflated price amounting to diversion of profit, and therefore, was not allowable u/s. 37(1)of I.T. Act, 1961.

(3) The CIT (Appeals) failed to appreciate that the total sale price including the above amount of Rs. 106,15,63,160/- was allowable both under section 28 and section 37 and the disallowance thereof results into Department taxing unreal and wrong amount of income.

(4) The CIT (Appeals) failed to appreciate that on identical facts, in the past in all the assessment years, such price was allowed by various Assessing Officers of the Appellate Authorities, and therefore, there was no justification on the part of The Assessing Officer to decide to the contrary, and thus, offend the law laid down by the Supreme Court in CIT v. Excel Industries Ltd. [2013] 358 ITR 295 (SC) holding that Revenue must be consistent and not flip-flop on the same issue in different assessment years.

3. The above four grounds of appeal raised by the Assesseeare against the common issue of confirmation of addition on account of excess price paid on purchase of sugarcane amounting to Rs. to Rs.106,15,63,160/- Hence, being considered together hence, being disposed-off by this consolidated order.

4. Briefly stated, the facts of the case are that the assessee is a Co-operative Society manufacturing sugar and byproducts. The AO noticed that sugar factors of South Gujrat were in practice of making payments to sugarcane suppliers of sugarcane price over and above the SMP/FRP declared by the Central Government for particular crushing season. The price paid to sugarcane growers is exempt from any tax being agricultural income. The assessee-firm the AO viewed that adjustment made and price paid over and above to sugarcane growers was done with ulterior motive and it is a diversion of income in the guise of higher sugarcane price over and

above SMP/FRP. The AO has 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 nonmembers. Accordingly, the AO made addition of Rs. 106,15,63,160 is on account of excess sugar cane price paid.

5. Being aggrieved, the assessee filed an appeal before the ld. CIT (A). The Ld. CIT (A) has confirmed this addition against which the assessee has come up in appeal before the Tribunal The CIT (A) has confirmed the addition made by the AO.

6. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the issue under consideration is squarely covered by the recent decision of Hon`ble Supreme Court in the case of CIT Vs. Tasgaon Taluka S.S.K. Ltd. [2019] 103 taxmann.com 57 (SC).

7. Per contra, the learned D.R. relied on lower authorities but did not controvert the legal issue that the case is covered by aforesaid judgements of Hon`ble Supreme Court.

8. We have heard both the sides and gone through the relevant material on record. It is an agreed position between the rival parties that the issue of payment of excessive price on purchase of sugarcane by the assesses 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 has recorded the factual matrix that the assessee in that case purchased and crushed sugarcane and paid price for the purchase during crushing seasons, 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 nonmembers. 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.The Hon`ble Supreme Court 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 nonmembers 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……..***
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> ***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."***

9. Both the sides are unanimously agreeable that the extent issue of deduction for payment of excessive price for purchase of sugarcane 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 AO for deciding it afresh as per law in consonance with the articulation of law by the Hon'ble Supreme Court in the aforenoted 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, that the assessee will be allowed a reasonable opportunity of hearing by the AO in such fresh determination of the issue. It is further made clear that the assessee will be at liberty to raise any other argument concerning the issue before the AO.

10. In the result, appeal of the assessee is allowed for statistical purposes.

11. The order pronounced in the open Court on 19.07.2019.

Sd/-	**Sd/-**
(H. S. SIDHU)	**(O.P.MEENA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat: Dated: 19th July, 2019/opm
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

// **TRUE COPY** //

Assistant Registrar, Surat