

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.1408/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Loknete Baburao Patil SSK Ltd.,
Laxminagar, A/P Angar,
Tal. Mohol,
Dist. Solapur – 413214

.... अपीलार्थी/Appellant

PAN: AAAAL2719C

Vs.

The Asst. Commissioner of Income Tax,
Solapur

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Ms. Shubhada A. Koppa
प्रत्यर्थी की ओर से / Respondent by : Ms. Nandita Kanchan

सुनवाई की तारीख / Date of Hearing : 23.07.2019	घोषणा की तारीख / Date of Pronouncement: 19.08.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-7, Pune, dated 02.01.2017 relating to assessment year 2012-13 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:-

(A) *Disallowance out of Sugarcane Purchases*

1 *Ld. CIT(A) ought to have followed judgement of ITAT, Mumbai dated 16/5/1968 in Pravara SSK in ITA No.10939-42 upheld by Hon'ble Supreme Court, 94 ITR 321, accepted by IT Dept. for over 3 decades, and as held by Supreme Court in Radhasoami Satsang, 193 ITR 321, it*

would be inappropriate to allow this position to be changed in subsequent year, as re-confirmed by Supreme Court in *Municipal Corporation of Thane v. Vidyut Metalics (2007) 8 SCC 688*.

- 2 The AO erred in making the disallowances for:
 - a) Season 2010-11 Rs 13,37,81,571 being Rs 756.37/Mt out of Avg. price paid of Rs 2017.95/Mt for 1,76,873 Mt of sugarcane purchased from farmers, both members and non-members; and
 - b) Season 2011-12 Rs 21,68,98,395 being Rs 750.42/Mt out of price paid of Rs 2025/Mt for 2,89,036 Mt of sugarcane purchased from farmers, both members and non-members aggregating to Rs.35,06,79,966 and the reasons given by Ld. CIT(A) for confirming above disallowances are wrong and incorrect.
- 3 Ld. CIT(A) has stated facts on pages 16 to 40 which are not related to the appellant, which are materially different to submissions of appellant and has ignored the appellant's submissions while rejecting its pleas on premeditated basis.
- 4 Ld. CIT(A) ought to have held that price determined by appellant co-operative for purchase of cane for its sugar factory is different from that done by a private businessman.
- 5 Ld. CIT(A) ought to have held that the price of cane purchased by appellant from its members and other farmers was contractually fixed as permitted by section 9 of the Sale of Goods Act and the said purchase price was deductible in computing the co-operative society's profits and gains from its business.
- 6 Ld. CIT(A) ought to have held that while computing profits of assessee society the price to be allowed as a deduction for sugarcane supplied by farmers is the price fixed on co-operative principles as is required to be paid as per its bye laws and the same cannot be restricted to the notified statutory minimum price called Fair and Remunerative Price (FRP) which is a support price.
- 7 Ld. CIT(A) erred in holding that uniform cane price paid to its members, to its non-members and to its gate-cane farmers, in excess of the notified FRP was a distribution of the appellant society's profits to them.
- 8 Justification relied upon by Ld. CIT(A) and extensively quoted from another order of the CIT(A) is totally out of place and is factually incorrect for the year under appeal.
- 9 CIT(A) erred in ignoring justifications given:
 - a) for season 2010-11 as per settlement with Shetkari Sanghata at the instance of State Govt. Rs 1850/Mt was paid as initial advance and thereafter on the basis of cane prices paid in its area of operation and Board of Directors resolved to pay a price of Rs 2025/Mt for sugarcane supplied by farmers and members in area of operation and Rs 1800/Mt for gatecane;
 - b) for season 2011-12 appellant's Board of Directors resolved to pay Rs 2025/Mt; and holding that these payments were not wholly and exclusively incurred for the purposes of business of the assessee society.

- 10 *Ld. CIT(A) erred in ignoring the judgement of Hon'ble Supreme Court in 1995 Suppl 3 SCC 475 wherein it was held that what was paid by co-operative sugar factories in Maharashtra to farmers was "price" for their cane and the Court had upheld the cane price fixation orders of the Commissioner of Sugar.*
- 11 *Ld. CIT(A) erred in ignoring the fact that the same AO had allowed comparable cane prices paid by private sector sugar mills as deductions in their assessments but cane price in excess of FRP was disallowed in the hands of co-operative sugar factories.*
- 12 *Without prejudice to the above, Ld. CIT(A) erred in holding that actual cane harvesting and transport cost incurred and paid by appellant to contractors and not to the farmer cane suppliers be reduced from FRP.*
- B) Concession Given in Sugar Sales to Members
- On the facts and in the circumstances of the case, Ld. CIT(A) erred in holding that the concession of Rs 15,68,412 in price given to members for sugar sold to them was "income" in the hands of the appellant.*

3. Both the learned Authorized Representatives fairly pointed out that the issues raised in the present appeal stands covered by earlier order of Tribunal on the aforesaid issues, as in the case of other Sahakari Sakhar Karkhana (SSK) cases.

4. The first issue raised in the present appeal is against disallowance on account of Excess Cane Price paid to sugarcane suppliers.

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, this issue is set aside to the file of Assessing Officer. Thus, the ground of appeal No.1 is allowed.

7. Now, coming to second ground of appeal raised by assessee, which is against addition made on account of sale of sugar at concessional rates.

8. The learned Departmental Representative for the Revenue pointed out that the first issue which needs to be adjudicated is whether it is income in the hands of assessee and this aspect has not been decided in the case of assessee.

9. We find that the Tribunal in Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT in ITA No.308/PUN/2018, relating to assessment year 2013-14, vide consolidated order dated 14.03.2019 have remitted the issue back to the file of Assessing Officer vide its deliberations in para 11 at pages 22 to 24 of order to

apply the ratio laid down in CIT Vs. Krishna Sahakari Sakhar Karkhana Ltd. (2012) 211 TAXMANN 109 (SC) and determine whether difference between average price of sugar sold in the market and that sold to the Members at concessional rate was the appropriation of profits or not. Following the same parity of reasoning, this issue is also remitted back to the 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.

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

Order pronounced on this 19th day of August, 2019.

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

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

पुणे / Pune; दिनांक Dated : 19th 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)-7, Pune;
4. The Pr.CIT-6, 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