

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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.2288 & 867/PUN/2014
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

Sahyadri Sahakari Sakhar Karkhana Ltd.,
A/P. Yashwant Nagar, Tal.-Karad,
Distt. – Satara

PAN : AAAAS4070K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 1, Satara

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni
Revenue by : Shri Uodal Raj Singh

सुनवाई की तारीख / Date of Hearing : 06-08-2019

घोषणा की तारीख / Date of Pronouncement : 27-08-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-III, Pune for the assessment years 2009-10 dated 06-06-2014 and 2010-11 dated 01-01-2014, respectively.

2. The appeal of the assessee in ITA No. 2288/PUN/2014 is time barred by 101 days. The assessee has filed an application seeking condonation of

delay in filing of the appeal supported by an affidavit. After perusal of the same, we are satisfied that the delay in filing of the appeal is not intentional or deliberate but has been caused due to bonafide reasons as stated in the affidavit. Thus, the delay in filing of appeal is condoned and the appeal is admitted to be heard and disposed of on merits.

3. Shri M.K. Kulkarni appearing on behalf of the assessee submitted that the assessee is engaged in manufacturing of white sugar. The ld. Counsel for the assessee submitted that the Common issue raised in both the appeals by the assessee is against addition on account of payment of excess sugarcane price paid by the assessee to the farmers, i.e. the price over and above the Statutory Minimum Price (SMP) fixed by State Government for purchase of cane. The ld. Counsel submitted that the issue raised in present appeals by the assessee has already been considered and adjudicated by the Co-ordinate Bench of Tribunal in bunch of appeals with the lead case DCIT vs. Vasant Rao Dada Patil SSK Ltd., ITA Nos.50 to 52/PUN/2012 for the assessment years 1992-93, 1994-95 & 1996-97, respectively vide order dated 20.03.2019. The Tribunal has restored the issue back to the file of Assessing Officer for de-novo adjudication.

3.1 The ld. Counsel further submitted that another issue in appeal for assessment year 2010-11 is sale of sugar at concessional rate to the members. This issue has also been considered by the Tribunal in the case of DCIT Vs. Vasant Rao Dada Patil SSK Ltd. (supra). The issue can be restored to Assessing Officer with similar directions.

4. Shri Uodal Raj Singh representing the Department fairly submitted that the issue of excess cane price paid by the assessee sugar factories to the farmers has been restored back to the file of Assessing Officer by the Tribunal in bunch of appeals. Therefore, this issue can also be restored to the file of Assessing Officer with similar directions.

5. Both sides heard. Orders of the authorities below perused. The assessee is a Co-operative Society engaged in manufacturing of sugar. The assessee is purchasing sugarcane from its members and non-members. The assessee has made payment for purchase of sugar cane from farmers at price higher than the Fixed and Remunerative Price (FRP) of the Government. The authorities below have disallowed the difference between the price paid by the assessee and FRP fixed by the Government. The Co-ordinate Bench of Tribunal in the case of DCIT vs. Vasant Rao Dada Patil SSK Ltd. (supra) has restored this issue back to the file of Assessing Officer to be decided in the light of judgment rendered by Hon'ble Supreme Court in the case of CIT Vs. Tasgaon Taluka S.S.K. Ltd. reported as 103 taxmann.com 57. We deem it appropriate to restore this issue back to the file of Assessing Officer with similar directions. The issue is allowed for statistical purpose.

6. The second issue in appeal for assessment year 2010-11 is sale of sugar at concessional rate to the members. This issue was also considered by the Tribunal in the case of DCIT Vs. Vasant Rao Dada Patil SSK Ltd. (supra). The Co-ordinate Bench has restored the issue to Assessing Officer for de-novo adjudication on the touchstones of the factors highlighted by the Hon'ble Supreme Court of India in the case of Commissioner of Income

Tax Vs. Krishna SSK Ltd. reported as 211 Taxman 109. Thus, we deem it appropriate to restore the issue back to Assessing Officer with similar directions. The issue is allowed for statistical purpose.

7. In the result, both the appeals of assessee are allowed for statistical purpose.

Order pronounced on Tuesday, the 27th day of August, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27th August, 2019

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-III, Pune
4. आयकर आयुक्त / The CIT-III, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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