

आयकर अपीलीय 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

Sl. No.	ITA No./ C.O. No.	Name of Appellant	Name of Respondent	Asst. Year
1	952/PUN/2013	ACIT, Circle-1, Nashik.	Vasantrya Dada Patil S.S.K. Ltd., At Post Vithewadi, Post Lohner, Tal. Deola, Nashik. PAN : AAAAV0637K	2009-10
2	1017/PUN/2013	DCIT, Circle-3, Nanded	Bhaurao Chavan S.S.K. Ltd., Laxmi Nagar, Tq. Ardhapur, Dist.- Nanded. PAN : AAAAB0959Q	2008-09
3	388/PUN/2014	ACIT, Circle-1, Solapur	Sahakar Maharshi Shankarrao Mohite Patil, S.S.K. Ltd., Yeshwantnagar, Akluj, Tal.-Malshiras, Distt.- Solapur PAN : AAAAS3736J	2010-11
4	470/PUN/2014	Sahakar Maharshi Shankarrao Mohite Patil, S.S.K. Ltd., Yeshwantnagar, Akluj, Tal.- Malshiras, Distt.- Solapur PAN : AAAAS3736J	ACIT, Circle-1, Solapur	2010-11
5	471/PUN/2014	Shree Adinath S.S.K. Ltd., Shelgaon, Bhalwani, Tal.-Karmala, Solapur PAN : AAAAS4167M	ACIT, Circle-1, Solapur	2010-11
6	664/PUN/2014	Shri Ganesh S.S.K. Ltd., A/P. Rajangaon Khurd, Tal.-Rahata, Ahmednagar PAN : AAEAS0636H	ACIT, Ahmednagar Circle, Ahmednagar	2009-10
7	665/PUN/2014	Shri Ganesh S.S.K. Ltd., A/P. Rajangaon Khurd, Tal.-Rahata, Ahmednagar	ACIT, Ahmednagar Circle, Ahmednagar	2010-11

		PAN : AAEAS0636H		
8	1219/PUN/2014	ACIT, Ahmednagar Circle, Ahmednagar	Shri Ganesh S.S.K. Ltd., A/P. Rajangaon Khurd, Tal.-Rahata, Ahmednagar PAN : AAEAS0636H	2009-10
9	1220/PUN/2014	ACIT, Ahmednagar Circle, Ahmednagar	Shri Ganesh S.S.K. Ltd., A/P. Rajangaon Khurd, Tal.-Rahata, Ahmednagar PAN : AAEAS0636H	2010-11
10	1871/PUN/2013	M/s. Nira Bhima S.S.K. Ltd., Shahajinagar, Tal.-Indapur, Pune PAN : AAAAN1256C	ITO, Ward-2(3), Pune	2010-11
11	1908/PUN/2013	ITO, Ward-2(3), Pune	M/s. Nira Bhima S.S.K. Ltd., Shahajinagar, Tal.-Indapur, Pune PAN : AAAAN1256C	2010-11
12	830/PUN/2014	Majalgaon S.S.K. Ltd., A/P. Sundar Nagar, Tal.-Majalgaon, Beed PAN : AAABM0171G	ACIT, Circle-2, Aurangabad	2010-11
13	824/PUN/2014	ACIT, Circle-1, Solapur	Shri Vitthal S.S.K. Ltd., A/P. Gursale, Tal.-Pandharpur, Solapur PAN : AAAAS3892H	2010-11
14	320/PUN/2014	ACIT, Satara Circle, Satara	Loknete Balasaheb Desai S.S.K. Ltd., A/P. Daulatnagar (Marali), Tal.-Patan, Satara PAN : AAAAB0362K	2010-11
15	469/PUN/2014	Loknete Balasaheb Desai S.S.K. Ltd., A/P. Daulatnagar (Marali), Tal.-Patan, Satara PAN : AAAAB0362K	DCIT, Satara Circle, Satara	2009-10
16	384/PUN/2014	ACIT, Circle-1, Solapur	Shree Siddheshwar S.S.K. Ltd., Tikekarwadi, Tal.-North Solapur,	2010-11

			Solapur PAN : AAAAS3729F	
17	1918/PUN/2014	Yeshwantrao Mohite Krishna S.S.K. Ltd., Rethare Bk, Post- Shivnagar, Tal.- Karad, Distt.-Satara PAN : AAAAK0946L	DCIT, Satara Circle, Satara	2010-11
18	1917/PUN/2014	Kisanveer Satara S.S.K. Ltd., Post-Kisanveernagar, Tal.-Wai, Distt.- Satara PAN : AAAAK0947M	DCIT, Satara Circle, Satara	2010-11
19	847/PUN/2014	ACIT, Circle-1, Solapur	Bhima S.S.K. Ltd., A/P. Takali Sikandar, Tal.-Mohol, Distt.- Solapur PAN : AAAAB0872C	2010-11
20	529/PUN/2014	Bhima S.S.K. Ltd., A/P. Madhukarnagar, Patas, Tal.-Daund, Distt.-Pune PAN : AAATB1781B	DCIT, Circle-1(1), Pune	2010-11
21	1351/PUN/2014	Bhima S.S.K. Ltd., A/P. Madhukarnagar, Patas, Tal.-Daund, Distt.-Pune PAN : AAATB1781B	DCIT, Circle-1(1), Pune	2008-00
22	676/PUN/2014	Shri Pandurang S.S.K. Ltd., A/P. Shreepur, Tal.- Malshiras, Distt.- Solapur PAN : AAATS5264J	ITO, Ward-1(1), Solapur	2010-11
23	823/PUN/2014	ACIT, Circle-1, Solapur	Shri Pandurang S.S.K. Ltd., A/P. Shreepur, Tal.- Malshiras, Distt.- Solapur PAN : AAATS5264J	2010-11

Assessee (s) Represented by	Mrs. Subhada Koppa, Shri Pramod Shingte
Revenue by	Ms. Shabana Parveen
Date of hearing	25-07-2019
Date of pronouncement	04-09-2019

आदेश / ORDER

PER BENCH :

These bunch of 23 appeals by the assessee and the Revenue for assessment years mentioned in the caption against the names of the assessees, are directed against the orders of Commissioner of Income Tax (Appeals), in the respective cases. All the assessees, in the present set of appeals are running co-operative sugar factories. They purchase sugarcane from the farmers and sell white sugar after manufacturing the same. The core issues raised in these bunch of appeals are as under:-

- i. Taxability of **“Excess Sugarcane Price”** paid by the assessees to sugarcane suppliers, i.e. the price over and above the Statutory Minimum Price (SMP) fixed by State Government for purchase of cane.
 - ii. Taxability of **“Concessional Sugar Price”** *qua* the levy price and the manner of giving effect to the **directions of the Hon’ble Apex Court** in the case of CIT vs. Krishna SSK, (2012) 211 taxmann.com 109 (SC).
2. We shall now take up each of the above issues in the following paragraphs of this composite order.

A. Excess Sugarcane Price Paid to Sugarcane Suppliers

3. Referring to the facts and issues, the Ld. Authorised Representatives appearing on behalf of the assesseees and Ld. Departmental Representatives representing the Department, submitted, at the outset, that the issue of excess sugarcane price raised in present set of appeals by the assesseees/Revenue have already been considered and adjudicated by the Co-ordinate Bench of Tribunal in bunch of appeals with the lead case i.e. DCIT vs. Vasant Rao Dada Patil SSK Ltd. vide ITA Nos.50 to 52/PUN/2012 for the assessment years 1992-93, 1994-95 & 1996-97, respectively dated 20.03.2019.

4. The Co-ordinate Bench (supra) after considering the binding judgment of Hon'ble Supreme Court in the case of CIT Vs. Tasgaon Taluka S.S.K. Ltd. reported as 103 taxmann.com 57, has decided this issue as under :

"5. We have heard both the sides and gone through the relevant material on record. There is consensus ad idem between the rival parties that the issue of payment of excessive price on purchase of sugarcane by the assesseees 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 recorded the factual matrix that the assessee in that case purchased and crushed sugarcane and paid price for the purchase during crushing seasons 1996-97 and 1997-98, 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 non-members. 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. He 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 non-members 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.....”

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.**”

6. Both the sides are unanimously agreeable that the extant issue of deduction for payment of excessive price for purchase of sugarcane, raised in most of the appeals under consideration, 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 respective A.Os. for deciding it afresh as per law in consonance with the articulation of law by the Hon’ble Supreme Court in the aforesaid 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, the assessee will be allowed a reasonable opportunity of hearing by the AO in such fresh determination of the issue.

7. It is noted that in some of the appeals, the assessees have raised an alternate ground for allowing deduction u/s.80P in respect of the addition.

8. The ld. ARs, in some of the cases, which were represented by them, were fair enough not to press such ground as it is only an alternate ground and having become infructuous in view of the restoration of the matter to the AO. No argument was advanced in support of such ground in other cases, even where the ld. ARs participated in proceedings before the Tribunal. Therefore, the said alternate ground in all such cases is dismissed.”

5. From the above, it is evident that, following the judgement in the case of Tasgaon Taluka SSK Ltd. (supra), the Tribunal remitted the issue to the file of the Assessing Officer with the direction to determine what constitutes taxable profits and what constitutes an allowable deduction.

6. Thus, in view of the assertions made by both the sides that the facts in the present set of appeals being identical to the issue relating to excess sugarcane price paid by the assessee the issue is restored to the file of Assessing Officer with similar directions as above in the cases of M/s. Vasant Rao Dada Patil SSK Ltd. (supra). The Assessing Officer shall decide the issue, after affording reasonable opportunity of hearing to the respective assessees, in accordance with law. Thus, the issue of excess cane price paid to sugarcane suppliers is allowed for statistical purposes in the aforesaid terms.

B. Defective manner of giving effect to the directions of the Hon'ble Apex Court in the case of CIT vs. Krishna SSK, (2012) 211 Taxman 109 (SC)

7. Taxability of sale of sugar at concessional rates to the members/shareholders. The facts relevant to this issue are that the assessees are engaged in the business of purchase of sugarcane, manufacturing of sugar in their mills and are selling sugar to the members and non-members. All these SSK sell sugar at concessional price to the farmers, who are the members of Sahakari Sakhar Karkhana (SSK). These members supply sugarcane to the SSK manufactures. The concessional rate of sugar is lower than the price set by the Government (levy sugar). The said concession i.e. the differences between the levy price set by the Government and the sale price to members, was deemed by the Assessing Officer in the scrutiny assessments as income of the assessee. This issue eventually travelled to the Hon'ble Supreme Court in the case of **Krishna SSK Ltd.** (supra). After due consideration, the Hon'ble Supreme Court gave certain directions to the Income Tax Authorities and remanded the matter to the file of the CIT(A) for

complying with the said directions before taxing any such concessional sugar price to the farmers. The details of these directions are discussed in the succeeding paragraphs of this order.

8. In some of the appeals, the Commissioner of Income Tax (Appeals) passed their orders after considering the judgment by Hon'ble Apex Court in the case of Krishna SSK Ltd. (supra). However, while giving effect to the said directions, the CIT(A) failed to comply with the directions strictly. For example, the direction relating to income nature of the said concession in sale price and includibility of the concessional sugar price in the total income of the assessee stands unattended by the CIT(A) while passing the order. The adjudication on this crucial direction is essential. In the absence of the decision of the lower authorities on these crucial issues, it is not possible for the Tribunal to adjudicate the issues under consideration raised by the appellants/department. In the above background, both, the counsels for the assessees and the Revenue fairly submitted that there is requirement of clear finding of fact and law on the directions by the Hon'ble Supreme Court of India. Thus, the includibility of such concessional sugar price in the total income of the assessee assumes great significance and the same is conspicuously missing in the impugned orders of the respective CIT(A).

9. In the light of above, the ld. AR for the assessee furnished following written submissions raising the issues for consideration of the CIT(A) in respective cases :-

“1. Hon'ble ITAT, Pune, in *Chh. Shahu SSK ITA No. 1924-26/PN/90 vide order dated 8/8/1996, at paras 32-39, following ratio of A. Raman & CO, 67 ITR 11 (SC), held that no income accrued to the assessee on sale of sugar at concession rate to its members.*

2. Hon'ble Bombay High Court, in *CIT v. Terna SSSK, 301 ITR 222, has noted that Counsel for the Dept, in view of Circular No. 117 dt.*

22/8/1973 did not press this ground in appeal.

3. Hon'ble Supreme Court, in *CIT v. Krishna SSK*, (2012) 211 Taxman 109 (SC), has not referred to Dept, not pressing this issue in High Court. Hon'ble Supreme Court has given following directions to the CIT(A) to decide the issue:

- a) Whether the difference between market price and the concessional price of sugar sold to members / farmers / cane growers, **should or should not be added to total income of the assessee** society?
- b) The CIT(A) will take into account whether the practice of selling sugar at concessional rate to its members / farmers / cane growers, has become a **practice or custom in co-operative sugar** industry?
- c) Whether any **resolution has been passed by State Govt.** supporting the practice?
- d) CIT(A) will also consider on **what basis the quantity of sugar is sold** on month to month basis, apart from Diwali.

4. After above judgement of Hon'ble Supreme Court was pronounced, in various appeals decided by different CIT(A)s, they have taken differing approaches, wherein:

- a) CIT(A)s have not decided the issue that was directed by the Hon'ble Supreme Court as to "whether difference between market price and concessional price of sugar sold should or should not be added to total income of the assessee society". (emphasis ours)

This issue revolves round whether the income sought to be assessed in the hands of the assessee society had at all accrued to it. In of the some of the submissions to CIT(A), this issue was specifically raised and ratio of Hon'ble Supreme Court's judgement in *A. Raman & CO*, 67 ITR 11 (SC) was relied upon. However, the CIT(A)s have not dealt with the same.

It has been submitted to the Hon'ble ITAT that assessee society has not made secret profits nor has received this difference in price back from the members and as such fictional income which is not received by the assessee cannot be taxed in its hands as held by Hon'ble Supreme Court in *CIT v. Calcutta Discount Co. Ltd*, 91 ITR 8 (SC).

- b) In some appeals before CIT(A), assessee has relied upon the CBDT Circular No. 117 for the proposition that rebate given by Co-op. Society to its members' was not disallowable in Society's hands and therefore the discount given to members in the price of sugar should not be taxed in the hands of the Co-op. Society. In some appeals the CIT(A), after noting the directions in *Krishna SSK*, has held that relying on the Circular, the said concession given by assessee is not taxable in its hands.
- c) In most of the appeals, CIT(A)s have held that supplying sugar at a concession price to members and cane suppliers has become a trade practice and custom of the industry. CIT(A)s have noted that State Govt. has now brought strict uniformity in this practice by issuing an order dt. 1/3/2006 u/s 79A of MCS Act, stating the eligibility for society to sell such sugar, its price and monthly quantum.
- d) Most CIT(A)s, having noted the aforesaid order dt. 1/3/2006, held that sugar sold at prices lower than levy sugar as provided of in the said order, would be taxable in assessee's hands at the difference between levy price and concessional price charged for infringement of the order.
- e) Some CIT(A)s held that concession sugar sold in excess of quantum permitted by order dt. 1/3/2006, would be taxable in the hands of the assessee society for infringement of the order.
- f) Some CIT(A)s held that concession sugar sold to cane growers who were not members was not permitted by order dt. 1/3/2006 and as such was its infringement and therefore, the concession given was

- taxable in the hands of the assessee society.*
- g) *Some assessee societies have not sold concessional sugar every month but only during Diwali or Gudi Padwa. If such sales were less than 5 kgs per month for the year, CIT(A)s have accepted them to be within the quantum of the order dt. 1/3/2006.*
- h) *Most CIT(A)s have not considered the submission that the Hon'ble Supreme Court in Krishna SSK, had specifically excluded the quantum sold during Diwali and therefore the Diwali sales of sugar at concession to members / cane growers were found acceptable by the Hon'ble Court.*

5. *It is in the above back ground that the concession given in sugar sold by assessee societies to members or cane growers is required to be adjudicated. On perusal of assessment orders and appellate orders of the CIT(A)s it is seen that the very first issue to be decided, i.e. whether difference between market price and concessional price of sugar sold should or should not be added to total income of the assessee society has not been adjudicated by the lower authorities. This issue goes to the root of the matter and it is necessary for the revenue authorities to consider the same, record their findings and reasons for their decision.*

6. *In the event revenue authorities hold that the difference between market price and concessional price of sugar is not at all to be taxed in the hands of the assessee society, then the matter stands concluded and no further findings are required.*

7. *If however, revenue authorities hold that it is the difference between levy price of sugar plus excise duty (as directed in order dt. 1/3/2006) and the price charged to members / cane suppliers which is to be taxed in the hands of assessee society, they may record their findings and reasons for their decision considering assessee societies contentions that they have not received this difference and hence it is not their income.*

8. *In the event of aforesaid difference (in 6 or in 7 above) is taxed as income in the hands of the assessee society, the quantity of sugar sold to members / cane growers which is being taxed be specified by the revenue authorities with their findings and reasons for the same. In arriving at the above findings and reasons, as directed by the Hon'ble Supreme Court in Krishna SSK, the authorities would be required to consider:*

- (a) *impact of custom and trade practice;*
- (b) *the State's policy;*
- (c) *basis for monthly sales; and*
- (d) *sales during Diwali"*

10. In the light of the above, it is the submissions of AR for the assessee and the ld. DR that all these bunch of appeals need to be remanded to the file of Assessing Officer for fresh adjudication for the purpose of giving effect to the directions of Hon'ble Apex Court in proper perspective.

11. On hearing both the sides, we find there is merit in the submissions of the AR. In all these appeals, the CIT(A) has failed to decide the appeals of the assessees in consonance with the above discussed direction of Hon'ble Apex Court in the case of Krishna SSK Ltd. (supra). Accordingly, in these bunch of appeals the issue of sale of sugar at concessional price to the members should be ideally remanded to the file of Assessing Officer for fresh consideration and adjudication of the issue on merits and law. In fact, the Hon'ble Supreme Court remanded the issue to the file of the CIT(A) for complying its direction in the case of Krishna SSK Ltd. (supra). However, in order to avoid multiplicity of the proceeding before different officers, and to be in tune with our findings given in para 7 of this order, we find, remanding to the file of the Assessing Officer is appropriate. Thus, we order accordingly. The Assessing Officer shall grant reasonable opportunity of hearing to the assessees, in accordance with law. Accordingly, the grounds raised in the appeals of the Revenue and the assessee are allowed for statistical purposes.

12. Apart from the core issues relating to excess cane price paid to sugar cane suppliers and sale of sugar at concessional rate to the members/shareholders there are other issues that have emerged in these appeals. These issues are tabulated here-in-under :

- i. Provision for Vasantdada Sugar Institute (VSI) Contribution.
- ii. Disallowance of late payment of Provident Fund.
- iii. Disallowance of Govt. Guarantee Cess.
- iv. Addition on account of contribution towards Chief Minister relief fund.

- v. Disallowance of carried forward business loss and unabsorbed depreciation.
- vi. Ceremony Expenses

13. The issues mentioned at Sl. No. i to iv were considered by the Tribunal in bunch of appeals decided on 13-06-2019 lead case being ITA No. 382/PUN/2014 in the case of ACIT Vs. Shri Shankar SSK Ltd. for assessment year 2010-11. Both the sides fairly admitted that the above four additions/disallowances in these set of appeals are on similar lines and on same set of fact. The relevant extract of the observations of the Tribunal on the said issues are reproduced here-in-below :

“Provision for Vasantdada Sugar Institute (VSI) Contribution.

17. *The ld. AR submitted that the issue of provision for VSI contribution has been decided by the Tribunal while adjudicating bunch of SSK appeals in Majalgaon SSK Ltd. Vs. ACIT in ITA No. 308/PUN/2018 for assessment year 2013-14 decided on 14-03-2019. The Co-ordinate Bench followed the decision rendered in the case of Bhima S.S.K. Ltd. in ITA No. 1414/PUN/2000. The ld. DR fairly admitted that this issue has already been considered by the Tribunal. We observe that the Co-ordinate Bench has decided this issue in favour of assessees by holding as under :*

“18. We have heard both the sides and gone through the relevant material on record. It is found that the ld. CIT(A) has determined this issue in favour of the assessee by following the order passed by the Pune Benches of the Tribunal in the case of Bhima S.S.K. Ltd. (supra). No material has been placed on record to show that this order of the Tribunal has been reversed or modified in any manner by the Hon’ble High Court. Respectfully following the precedent, we decide this issue in favour of the assessee.”

17.1 *Thus, in view of the above findings of the Tribunal and submissions made by both the sides, the ground is decided in favour of the assessee.*

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Disallowance of late payment of Provident Fund.

23. *Another issue in some of the appeals is disallowance of contribution towards Provident Fund made after statutory time limit but before the due date of filing return of income. The Ld. Authorised Representatives submitted that admittedly there was delay in deposit of contribution*

towards Provident Fund but such amount was deposited before due date of filing return of income. This issue has been settled by the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Alom Extrusions Ltd. reported as 319 ITR 306.

23.1 The assessee's eligibility to claim deduction on delayed deposit of employees share in Provident Fund scheme but before due date of filing return of income is no more *res integra*. The Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Ghatge Patil Transports Ltd. reported as 368 ITR 749 following the ratio laid down in the case of Commissioner of Income Tax Vs. Alom Extrusions Ltd. (*supra*) held that deduction to the assesseees in respect of statutory payment of Provident Fund is to be allowed only on actual payment before the due date of filing return of income. In the present set of appeals it is not disputed by the Revenue that the contribution was made before the due date of filing return of income. Thus, in view of well settled law and undisputed facts, this issue is decided in favour of the assesseees.

Disallowance of Government Guarantee Fee.

24. Another issue that has emerged in these set of appals is disallowance made u/s. 43B in respect of Government Guarantee Fee not paid by the assessee. The authorities below have held that Government Guarantee Fee is akin to tax, cess or fee and hence, non-payment of same would result in disallowance u/s. 43B of the Act. Section 43B(a) provides that any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force shall be allowed only when such sum is actually paid. A bare perusal of the above provision would show that tax, duty, cess or fee should flow from the statute. Any other payments payable or paid to the Government which do not fall within the realm of any enactment would not partake the character of tax, duty, cess or fee as envisaged u/s. 43B of the Act.

24.1 In the present case payments made by the assesseees on account of Government Guarantee Fee to the Maharashtra Government are in respect of pre seasonal loans. It is neither emanating from the records, nor the Revenue has brought before us any material to show that the assessee is under obligation to pay Government Guarantee Fee on account of statutory requirement as 'revenue' to the State. The Hon'ble Rajasthan High Court in the case of Commissioner of Income Tax Vs. Udaipur Distillery Co. Ltd. reported as 268 ITR 305 has held that 'tax', 'duty', 'cess' or 'fee' constituting a class, denotes various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kind of impost depending on the purpose for which they are levied. "The Hon'ble High Court further clarified that merely levy of charge as tax or fee is not conclusive of its character. It is only if any amount becomes payable by way of tax, duty, cess or fee, it falls within the purview of section 43B of the Act. Thus, in the light of above, we hold that the Government Guarantee Fee cannot be put in same bracket as tax, cess or duty and hence, no disallowance u/s. 43B in respect of non-payment of such fee can be made. Accordingly, this issue is decided in favour of the assessee."

Addition account of contribution towards Chief Minister relief fund.

25. Another issue that is emanating in these group of appeals is disallowance of contribution by assessees towards Chief Minister relief fund. We find that this issue has been considered by Co-ordinate Bench in the case of *Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra)* and has held as under :

“21. We have heard both the sides and gone through the relevant material on record. There is no dispute that the assessee did make contribution to the Chief Minister Relief Fund. As against the assessee claiming the entire amount as deduction in its Profit and loss account, the AO opined that the said contribution was eligible for deduction u/s. 80G(iiihf) of the Act at the rate of 50% along with other qualifying sums. The ld. CIT(A) sustained the entire addition overlooking the fact that deduction u/s.80G(iiihf) was not allowed by the AO on such contribution in the computation of total income. Under these circumstances, we cannot uphold the disallowance of the entire amount claimed as deduction by the assessee in its Profit and loss account. Approving the additions made, we remit the matter to the file of the AO for granting the deduction u/s.80G(iiihf) as per law after allowing a reasonable opportunity of hearing to the assessee.”

It is an undisputed fact that the issue in present set of appeals is identical. Thus, following the order of Co-ordinate Bench, the issue is restored to the file of Assessing Officer to be adjudicated in similar terms. The issue is allowed for statistical purpose.”

Since, additions/disallowances have been made in the present set of appeals on similar lines, the findings given by the Tribunal in the case of *ACIT Vs. Shri Shankar SSK Ltd. (supra)* would *mutatis mutandis* apply in the present set of appeals. The relevant grounds in the present appeals are disposed of accordingly.

Disallowance of carried forward business loss and unabsorbed depreciation.

14. The assessee in appeal in ITA No. 1871/PUN/2013 has raised this issue. The ld. AR has prayed that since the issue of carry forward of business loss and unabsorbed depreciation is related to core issue of disallowance of excess sugarcane price, therefore, the same may be restored back to the file of Assessing Officer for de-novo adjudication

along with the core issue. We find merit in the contentions of the ld. AR of assessee. Accordingly, this issue is restored back to the file of Assessing Officer for fresh adjudication.

Ceremony Expenses

15. The assessee in ITA No. 1871/PUN/2013 has raised another ground relating to ceremony expenses Rs.1,04,772/-. We find that the Commissioner of Income Tax (Appeals) has allowed 50% of the expenditure by following the order of Tribunal in the case of Vitthal SSK Ltd. and has restricted the addition to Rs.52,386/-. We do not find any infirmity in the findings of Commissioner of Income Tax (Appeals). Accordingly, ground raised by the assessee in appeal is rejected.

16. The assessee in ITA No. 830/PUN/2014 has raised grounds assailing following three additions/disallowances :

- i. Advertisement expense u/s. 40a(ia) of the Act.
- ii. Pental rent u/s. 40a(ia) of the Act.
- iii. Temporary shade written off Rs.21,33,025/-.

17. Shri Pramod Shingte appearing on behalf of the assessee stated at the Bar that he is not pressing grounds relating to disallowance of advertisement expenses and pental rent. Thus, in view of the statement made by the ld. AR of assessee, the grounds raised by the assessee assailing the above said two additions are dismissed as not pressed.

18. In respect of disallowance of Temporary Shade written off Rs.21,33,025/-, we observe that the Commissioner of Income Tax

(Appeals) has restored this issue back to the file of Assessing Officer to be decided in the light of decision of Bangalore Bench Tribunal in the case of Bhima SSK Ltd. Vs. DCIT reported as 22 TTJ 21. The order of Commissioner of Income Tax (Appeals) on this issue is justified and reasonable. We find no reason to interfere with the same. Accordingly, the ground raised by the assessee on this issue is dismissed, as well.

19. In the result, the appeals of assessee and the Department are partly allowed for statistical purpose in the terms aforesaid.

Order pronounced on Wednesday, the 04th day of September, 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 : 04th September, 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) concerned
4. आयकर आयुक्त / The CIT concerned
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