

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “बी” पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “B”, PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND  
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.1429/PUN/2017

निर्धारण वर्ष / Assessment year : 2013-14

Vithalarao Shinde SSK Ltd.,  
P.O. Gangamai Nagar,  
Pimpalner, Tal: Madha,  
Dist. Solapur – 413 210.

..... अपीलार्थी /  
Appellant.

PAN : AAAAM1644B.

बनाम v/s

The Asst.Commissioner of Income Tax,  
Circle – 1, Solapur.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri Shubdha A. Koppa.

Revenue by : T. Vijaya Bhaskar Reddy

सुनवाई की तारीख / Date of Hearing : 05.08.2019	घोषणा की तारीख / Date of Pronouncement: 11.09.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 7, Pune dt.31.01.2017 for the assessment year 2013-14.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Co-operative Society engaged in the business of manufacturing and sale of sugar and its by-products. Assessee electronically filed its return of income for A.Y. 2013-14 on 26.09.2013

declaring total income at Rs.5,09,80,335/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.01.03.2016 and the total income was determined at Rs.1,36,08,84,618/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt. 31.01.2017 (in appeal No.PN/CIT(A)-7/Cir-1/363/2015-16) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised various grounds.

3. All the grounds being argumentative in nature are not reproduced and the sole grievance of the assessee is with respect to the additions on account of alleged excess sugar cane purchase and sale of sugar at concessional rate.

4. With respect to the excess purchase price of sugar cane purchased, AO noticed that assessee had purchased sugar cane from the farmers at price much higher than the Fair Remunerative Price (FRP) notified by the Government. AO was of the view that any payment in excess of FRP was in the nature of distribution of profits. He was of the view that only statutory liability i.e., FRP price can be considered as business expenditure. He accordingly worked out the payment of excess sugar cane price as tabulated by him at Para 5 of the assessment order and determined the excess price of Rs.130,07,39,570/- and disallowed the same.

5. AO has noticed that assessee had supplied Rs.14,402 quintals of sugar to its members as an average price of Rs.2,102/- per quintal, whereas the average price of free sugar realized by the assessee was

Rs.2,738.50 per quintal. Assessee was asked as to why the difference between average free sale price and the concessional price should not be disallowed and added to the total income as it was nothing but the distribution of profits. Assessee made the submissions which were not found acceptable to the AO. He therefore disallowed the difference of the amount paid between average free sale price and concessional price amounting to Rs.91,64,713/- and made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who granted partial relief to the assessee.

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us.

6. Before us, Ld.A.R. at the outset, submitted that the issue in the present ground is covered by the decision of group of cases decided by Pune Tribunal, the lead case being of Siddheshwar Sahakari Sakhar Karkhana Ltd., and others (in ITA No.1210/PUN/1997 for A.Y. 1992-93 order dated 01.05.2019). She pointed to the order of Tribunal and submitted that the issue in those cases has been remitted to the file of AO with necessary directions. She submitted that since the facts of the present case are identical to that of Siddheshwar Sahakari Sakhar Karkhana Ltd., and others (supra), the issue be remitted back to the file of AO with similar directions. Ld. D.R. on the other hand did not controvert the submissions made by the Ld.A.R. but however supported the order of lower authorities.

7. We have heard the rival submissions and perused the material on record. The issue in the present grounds is with respect to the

payment of excessive sugar cane price to the farmers on purchase of sugar cane by the assessee and addition of differential price between average free sale price and concessional price charged on sale of sugar. We find that Co-ordinate Bench of the Tribunal on identical issue in the case of Siddheshwar Sahakari Sakhar Karkhana Ltd., and others (supra) after considering the order of Hon'ble Apex Court in the case of CIT Vs. Tasgaon Taluka S.S.K. Ltd., has restored the matter to AO and directed the AO by observing 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. With similar directions, we set aside.”*

8. With respect to addition on sale of sugar at concessional rate, we find that the Co-ordinate Bench of the Tribunal in the case of Siddheshwar Sahakari Sakhar Karkhana Ltd., and others had remitted the issue to the file of AO to apply the ratio of the decision of Hon'ble

Apex Court laid down in the case of Krishna Sahakari Sakhar Karkhana reported in (2012) 211 Taxmann. 109 (SC) by observing as under :

*“9. We have heard the rival submissions and perused the material on record. We find that on identical issue, in the case of Siddheshwar Sahakari Sakhar Karkhana Ltd. and others (supra) the Co-ordinate Bench of the Tribunal has remitted the issue to the file of AO to apply the ratio of the decision of Hon’ble Apex Court’s laid down in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Ltd. reported in (2012) 211 Taxmann 109 (SC), by observing as under :*

*“24. Now, coming to the next issue i.e. sale of sugar at concessional rate to Members. In this bunch of appeals, this is the second issue which is mostly raised and different Counsels appearing before us have pointed out that the said issue has been decided by the Hon’ble Supreme Court in CIT Vs. Krishna Sahakari Sakhar Karkhana Ltd. (supra), but the appeals in the present bunch have been decided without taking into consideration the said decision, as the orders were passed by CIT(A) before the said decision.*

*25. We find that the Tribunal in Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra) 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. (supra) 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 to decide in line with same directions.”*

9. Before us, Revenue has neither pointed out any distinguishing feature in the facts of the present case and that Siddheshwar Sahakari Sakhar Karkhana Ltd., and others (supra) nor has placed any material on record to demonstrate that the order of the Tribunal in the case of Siddheshwar Sahakari Sakhar Karkhana Ltd., and others (supra) has been set aside / stayed / over-ruled by the higher Judicial Forum. We, therefore following the decision of the Co-ordinate Bench of the Tribunal in the case of Siddheshwar Sahakari Sakhar Karkhana Ltd., and others (supra) and for similar reasons, restore the issue to the file of AO to decide the issue on merits. Needless to state that AO shall grant adequate opportunity of hearing to the assessee. Assessee is also

directed to promptly furnish all the details called for by the authorities.

**Thus, the grounds of assessee are allowed for statistical purposes.**

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

Order pronounced on 11<sup>th</sup> day of September, 2019.

Sd/- (SUSHMA CHOWLA) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (ANIL CHATURVEDI) लेखा सदस्य / ACCOUNTANT MEMBER
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पुणे Pune; दिनांक Dated : 11<sup>th</sup> September, 2019.

Yamini

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-7, Pune.
4. Pr. CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,  
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

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