

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

BEFORE SHRI R.S.SYAL, VP AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1-2	57/PUN/2018 58/PUN/2018	Deshbhakta Ratnappnna Kumbhar Panchaganga Sahakari Sakhar Karkhana Ltd. Ganganagar, Tal. Ichalkranji, Dist. Kolhapur. PAN:AAAAD0725G	DCIT, Ichalkranji Circle, Ichalkranji	2010-11 2011-12
3-5	59/PUN/2018 60/PUN/2018 61/PUN/2018	Deshbhakta Ratnappnna Kumbhar Panchaganga Sahakari Sakhar Karkhana Ltd. Ganganagar, Tal. Ichalkranji, Dist. Kolhapur PAN:AAAAD0725G	ACIT, Ichalkranji Circle, Ichalkranji	2012-13 2013-14 2014-15
6	1570/PUN/2018	Deshbhakta Ratnappnna Kumbhar Panchaganga Sahakari Sakhar Karkhana Ltd. Ganganagar, Tal. Ichalkranji, Dist. Kolhapur PAN:AAAAD0725G	ACIT, Ichalkranji Circle, Ichalkranji	2015-16

Assessee by : Shri Chythanya K.K

Revenue by : Shri Abhijit Halder.

सुनवाई की तारीख / Date of Hearing : 26.09.2019

घोषणा की तारीख / Date of Pronouncement : 30.09.2019

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM :**

These bunch of six appeals preferred by the assessee for the various assessment years mentioned in the caption emanates from the orders of the Commissioner of Income Tax (Appeals).

2. Since most of the appeals have at least one common issue, we are, therefore, disposing them off by this consolidated order for the sake of convenience.

3. The assessee in the present set of appeals is engaged in manufacturing of white sugar. The primary issues raised in these appeals are:

- i. Excess cane price paid by the assessees to sugarcane suppliers/ members, i.e. the price over and above the Statutory Minimum Price (SMP) fixed by State Government for purchase of cane.
- ii. Addition on account of sale of sugar at concessional rate to the members/shareholders by the assessees.

Apart from the above two primary issues, there is one another issue which is emerging from some of the appeals herein which reads as under:

- i. Treating Advance Lease rent received as income for the year.

4. The Ld. AR of the assessee and Ld. DR representing the Department submitted at the outset that the issues raised in present set of appeals by the

assessee have already been considered and adjudicated by the Co-ordinate Bench of Tribunal in bunch of appeals except the issue on “treating Advance Lease rent received as income for the year”. The facts and issues raised in present appeals are similar. The Ld. DR furnished copy of order of Tribunal dated 14-03-2019 vide which bunch of 162 appeals were disposed of by the Co-ordinate Bench, the lead case being Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT in ITA No. 308/PUN/2018 for the assessment year 2013-14 and also by the order of Tribunal dated 13.06.2019, the lead case being ACIT Vs. Shri Shankar SSK Ltd. in ITA No.382/PUN/2014 for the assessment year 2010-11, copy of which has also been placed on records.

5. After hearing both the sides and after considering the order of Co-ordinate Bench in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra) and also in the case of ACIT Vs. Shri Shankar SSK Ltd. (supra.) etc., we observe that the issues raised in the present set of appeals have already been considered and decided by the Co-ordinate Bench of the Tribunal Pune.

**Excess Cane Price Paid to Sugarcane Suppliers/ members :**

6. The Co-ordinate Bench after considering the judgment of Hon'ble Supreme Court of India 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 assessee 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.”*

7. Thus, in view of the statement made by both the sides that the facts in the present set of appeals are identical, the issue relating to excess sugarcane price paid by the assessee is restored to the file of Assessing Officer with similar directions as above in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra). The Assessing Officer shall decide the issue after affording reasonable opportunity of hearing to the respective assessee, in accordance with law.

#### **Sale of Sugar at Concessional rates to the Members/Shareholders**

8. The Ld. DR submitted that this issue was decided by the Hon'ble Apex Court in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Limited reported as 27 taxmann.com 162. In the present bunch of appeals where the issue has been raised, either the orders were passed by the Commissioner of Income Tax (Appeals) prior to the date of judgment of Hon'ble Supreme Court of India in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Limited (supra) i.e. 25-09-2012 and in some cases where the orders have been passed by the Commissioner of Income Tax (Appeals) subsequent to the date of said judgment, the Commissioner of Income Tax (Appeals) has not considered the judgment rendered by the Hon'ble Apex Court on this issue.

9. We find that the issue of sale of sugar at concessional rates has also been considered by the Co-ordinate Bench in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT (supra) and has held as under :

“11. Having heard both the sides and gone through the relevant material on record, it is observed that the AO made addition of the difference between the market price and the concessional price at which sugar (final product) was given to farmers and cane growers. In this regard, it is observed that this issue has been considered by the Hon’ble Supreme Court in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Limited (2012) 27 taxmann.com 162 (SC). Vide judgment dated 25-09-2012, the Hon’ble Supreme Court noticed that the difference between the average price of sugar sold in the market and the price of sugar sold by the assessee to its members at concessional rate was taxed by the Department under the head “Appropriation of profit”. The Hon’ble Summit Court remitted the matter to the CIT(A) for considering, inter alia,; “whether the abovementioned practice of selling sugar at concessional rate has become the practice or custom in the Co-operative sugar industry?; and whether any Resolution has been passed by the State Government supporting the practice?; The CIT(A) would also consider on what basis the quantity of the final product, i.e. sugar, is being fixed for sale to farmers/cane growers/Members each year on month-to-month basis, apart from others from Diwali?” The issue under consideration can be decided by an appropriate lower authority only on the touchstone of the relevant factors noted in the above judgment. In our considered opinion, it would be just and fair if the impugned orders on this score are set aside and the matter is restored to the file of AOs, instead of to the CITs(A), for fresh consideration as to whether the difference between the average price of sugar sold in the market and that sold to members at concessional rate is appropriation of profit or not, in the light of the directions given by the Hon’ble Supreme Court in the case of Krishna Sahakari Sakhar Karkhana Limited (supra). Restoration to the AO is necessitated because, following the judgment of the Hon’ble Apex Court in the case of Tasgaon Taluka S.S.K. Ltd. (supra), we have remitted the issue of payment of excessive price to the file of AO, and as such, the instant issue cannot be sent to ld. CIT(A) as it would amount to simultaneously sending one part of the same assessment order to the AO and other to the CIT(A), which is not appropriate. We order accordingly.”

10. Both the sides have stated at the Bar that the issue raised in present set of appeals are identical to the one already decided by the Co-ordinate Bench. Thus, in view of the above order by Co-ordinate Bench this issue is restored back to the file of Assessing Officer for de-novo adjudication in similar terms. The Assessing Officer shall grant reasonable opportunity of hearing to the assessee, in accordance with law.

**Treating Advance Lease rent received as income for the year**

11. This issue pertains to the action of the Assessing Officer in holding that the entire advance received by the assessee from its lessee Shree Renuka Sugars is income during the year. The assessee has leased out its sugar unit to Shree Renuka Sugars during the year w.e.f. 30.09.2011 vide lease deed dated 30.09.2011. The lease period is for 18 years upto 29<sup>th</sup> September, 2029. The consideration for the lease is stated to be the entire net liabilities disclosed by the assessee in its tender floated for the purpose. As per the stated form of the lease deed, the net liabilities of the assessee were Rs.14932.08 Lakhs. This total lease rent was to be spread over the life of the lease i.e. 18 years to give the annual lease rent at Rs.829.56 lakhs. The assessee disclosed lease rent during the year at Rs.414.78 lakhs (for half year) in its books. The case of the Assessing Officer is that there is no clause in the lease deed to provide for any advance lease rentals and in absence of the same, the actual amount received is the income of the assessee. On the other hand, the case of the assessee briefly is that this is an operating lease and the lease being of immovable property was governed by Section 105 of the Transfer of Property Act. The assessee has also submitted the accounting standards of the ICAI with respect to the recognition of lease income wherein it is stated that lease income has to be recognized in a straight line method over the life of the lease.

12. The Ld. CIT(Appeals) had upheld the addition made by the Assessing Officer on this issue as per reasons recorded in his order which is on record. The Ld. CIT(Appeals) has analyzed the lease agreement entered into between the assessee and the lessee, Shree Renuka Sugars and it appears that the addition was upheld by the Ld. CIT(Appeals) mainly on the reason that if the

lease agreement is terminated at any point of time, the advance would be actually forfeited by the assessee.

13. The Ld. AR of the assessee reiterated the submissions placed before the Assessing Officer as well as before the Ld. CIT(Appeals) and vehemently argued that there has been wrong interpretation by the Ld. CIT(Appeals) so far as lease agreement is concerned. He invited our attention to the copy of lease deed placed at Pages 417 to 462 of the paper book between the assessee, lessor and lessee, Shree Renuka Sugars dated 30.09.2011. That there in Clause 12.1, Article-XII speaks of termination and consequences of termination and vacation of demised sugar unit. It provides the situation in which the Lessor-society shall be entitled to terminate the lease agreement and there is duty casted upon the lessee company. If these duties are not performed by the lessee, the assessee may terminate the lease agreement. That therefore, it is not only the question of receiving money from the lessee but equal responsibility is there on the lessee to perform certain duties and if the same are not performed by them that would amount to termination of the lease agreement.

14. That therefore, it is not a blanket case of receiving money by lessor from the lessee and deriving income in the grab of lease deed. That further, Para 12.2 of the lease agreement similarly provides rights to the lessee company to terminate this lease agreement if certain duties are not performed by the lessor, assessee as provided therein. That thereafter, Para 12.3 provides that in case the lessor assessee as per the Para 12.1 terminates the lease agreement in view of the non-performance of some duties as enshrined therein by the lessee company, in such case lessor company may also forfeit the amount already received including initial payment amount as

compensation for the loss or damages that the lessor assessee may suffer because of the non-performance by the lessee company. The Ld. AR further invited our attention to Para 15.8 of the lease agreement which deals with the indemnity where party agrees to indemnify themselves. Thereafter, the Ld. AR of the assessee submitted that these amounts are nothing but advance amount paid for lease and it cannot be treated as income of the assessee. That from any shape of imagination, it is not a right interpretation that whatever money is received by the lessor assessee will be retained by them. From the lease agreement, it is very clear that only in the situation of termination of the lease agreement as result of non-performance by the lessee company of certain essential duties casted upon them as enshrined therein then only the lessor assessee company will have the right to forfeit the advance money.

15. Per contra, the Ld. DR relied on the orders of the Sub-ordinate Authorities.

16. We have perused the case records and heard the rival contentions. We have also analyzed the facts and circumstances in this case. We have also perused the lease agreement and further relevant documents related to this case. The observation of the Ld. CIT(Appeals) is not correct that in the event of termination of lease agreement, the money will be retained by the assessee and therefore it needs to be taxed as income of the assessee. This is so because, first of all the termination of the lease agreement should take place and it takes place since certain important duties which were casted upon the lessee company has not been performed by them. That for non-performance, it is quite possible that some loss or damages may arise to the lessor assessee for which the relevant clause emanates the lessor company to forfeit the

advance money received from the lessee company to cover up such loss or damage as the case may be. That further, on reading totality of facts along with the indemnity Clause, the advance amount paid for lease cannot be treated as income of the assessee in the given facts and circumstances. Therefore, in the interest of justice, we set aside the order of the Ld. CIT(Appeals) and **allow this ground of appeal raised by the assessee.**

17. In the result, all the appeals are fully/partly allowed for statistical purposes in the manner aforesaid as the case may be.

Order pronounced on 30<sup>th</sup> day of September, 2019.

Sd/-  
**R.S.SYAL**  
**VICE PRESIDENT**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> September, 2019.

SB

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

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

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	26.09.2019	Sr.PS/PS
2	Draft placed before author	27.09.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		