

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	344/PUN/2017 545/PUN/2017	Manganga Sahakari Sakhar Karkhana Ltd. A/p. Sonarsiddhanagar, Tal. Atpadi, Dist. Sangli-415 301 PAN:AAAAM1794J	ACIT, Circle-2, Sangli	2010-11 2012-13
3	1886/PUN/2017	Ganesh Sahakari Sakhar Karkhana Ltd. A/p. Rajangaon Khurd, Tal. Rahata, Dist. Ahmednagar Pin-413 719 PAN: AAEAS0636H	ACIT, Ahmednagar Circle, Ahmednagar	2013-14
4	1675/PUN/2017	Rena Sahakari Sakhar Karkhana Ltd. Dilipnagar, A/p. Niwada Tq. Renapur, Dist. Latur PAN: AAAAR1864N	DCIT, Latur Circle, Latur	2013-14
5	1693/PUN/2017	Vasantdada Sahakari Sakhar Karkhana Ltd. Gat No.173/174, Madhavnagar, Sangli, PAN: AAAAV0137C	ACIT, Circle-2, Sangli.	2013-14
6	1729/PUN/2017	Shri Dudhganga Vedganga Sahakari Sakhar Karkhana Ltd. Sushant S Phadnis CA 613, E Ward Phadnis Chambers, Shahupuri, 1st Lane, Kolhapur-416001 PAN: AAAAS3732N	ACIT, Circle-1, Kolhapur	2014-15

7	1730/PUN/2017	Shri Bhogawati Sahakari Sakhar Karkhana Ltd. Sushant S Phadnis CA 613, E Ward Phadnis Chambers, Shahupuri, 1st Lane, Kolhapur-416001 PAN: AAAAS3731R	ACIT, Circle-1, Kolhapur	2014-15
8	1731/PUN/2017	Sadashivrao Mandlik Kagal Tal. Sahakari Sakhar Karkhana Ltd. Sushant S Phadnis CA 613, E Ward Phadnis Chambers, Shahupuri, 1st Lane, Kolhapur-416001 PAN: AAAAK1300Q	ACIT, Circle-1, Kolhapur	2014-15
9	1756/PUN/2017	Shri Tatyasaheb Kore Warana Sahakari Sakhar Karkhana Ltd. A/p Warnanagar, Tal. Panhala, Kolhapur-416113 PAN: AAAAT3108M	ACIT, Circle-1, Kolhapur	2014-15
10	1767/PUN/2017	Rajarambapu Patil SSK Ltd. Sakharale, Islampur, Dist. Sangli-415414 PAN:AAAAR0790D	ACIT, Circle-2, Sangli	2014-15
11-13	2559/PUN/2017 1782/PUN/2017 1783/PUN/2017	Sonhira Sahakari Sakhar Karkhana Ltd. At Post. Wangi. Tal. Kadegaon. Dist. Sangli PAN:AAATS7796R	ACIT, Circle-2, Sangli	2012-13 2013-14 2014-15
14	1876/PUN/2017	Karmaveer Shankarrao Kale Sahakari Sakhar Karkhana Ltd. Gautamnagar, Post-Kolpewadi, Tal. Kopargaon, Dist.Ahmednagar, Pin-423602 PAN:AAATT3070H	DCIT, Ahmednagar Circle, Ahmednagar	2009-10

15	1885/PUN/2017	Mahankali Sahakari Sakhar Karkhana Ltd. A/p. & Tal. Kavthemahankal, Dist. Sangli-416405. PAN: AAAAS4544E	ACIT, Circle-2, Sangli	2013-14
16	1989/PUN/2017	Shri Mahankali Sahakari Sakhar Karkhana Ltd. A/p. & Tal. Kavthemahankal, Dist. Sangli-416405. PAN: AAAAS4544E	ACIT, Circle-2, Sangli	2014-15
17	2969/PUN/2017	Shree Mahankali Sahakari Sakhar Karkhana Ltd. A/p. & Tal. Kavthemahankal, Dist. Sangli-416405. PAN: AAAAS4544E	ACIT, Circle-2, Sangli	2012-13
18	1897/PUN/2017	Mohanrao Shinde Sahakari Sakhar Karkhana Ltd. A/p. Arag, Tal. Miraj, Dist. Sangli-416401 PAN: AACAM0354L	ACIT, Circle-1, Sangli	2013-14
19	1915/PUN/2017	Manganga Sahakari Sakhar Karkhana Ltd. A/p. Sonarsiddhanagar, Tal. Atpadi, Dist. Sangli-415301 PAN: AAAAM1794J	ACIT, Circle-2, Sangli	2013-14
20	1953/PUN/2017	Appasaheb N Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd. A/p. Hirali. Tal. Gadhinglaj, Kolhapur-416502. PAN: AAAAG0574A	ACIT, Circle-1, Kolhapur.	2013-14
21	1960/PUN/2017	Shri Vrideshwar Sahakari Sakhar Karkhana Ltd. M/s. KADAM & CO. Chartered Accoutants, Vednat 8/9, viraj Estate. Opp. Tarakpur Bus Stand, Ahmednagar-414003 PAN: AABCV0782E	ACIT, Ahmednagar Circle, Ahmednagar	2014-15

22	2060/PUN/2017	Pd. Dr Vithalrao Vikhe Patil Sahakari Sakhar Karkhana Ltd. At Post- Pravarnagar, Tal. Rahata, Dist.Ahmednagar Pin-413712 PAN: AAAAP0848A	ACIT, Ahmednagar Circle, Ahmednagar	2014-15
23	2071/PUN/2017	Manganga Sahakari Sakhar Karkhana Ltd. A/p. Sonarsiddhanagar, Tal. Atpadi, Dist. Sangli-415301 PAN: AAAAM1794J	ACIT, Circle-2, Sangli	2014-15
24	602/PUN/2017	Mahankali Sahakari Sakhar Karkhana Ltd. A/p. & Tal. Kavthemahankal, Dist. Sangli-416405. PAN: AAAAS4544E	ACIT, Circle-2, Sangli	2011-12
25	2167/PUN/2017	ACIT, Circle-3, Aurangabad.	M/s. Vaidyanath Sahakari Sakhar Karkhana Ltd. At-Pangri, Tal. Parli, Dist. Beed. PAN:AAA AV0304P	2013-14
26	2268/PUN/2017	Bhima Sahakari Sakhar Karkhana Ltd. A/p. Takli Sikandar, Tal. Mohol, Dist. Solapur-413248 PAN: AAAAB0872C	ACIT, Circle-2, Solapur.	2012-13
27	2968/PUN/2017	Bhima Sahakari Sakhar Karkhana Ltd. A/p. Takli Sikandar, Tal. Mohol, Dist. Solapur-413248 PAN: AAAAB0872C	ITO, Ward 2(2), Solapur	2014-15
28	2179/PUN/2017	Nira Bhima Sahakari Sakhar Karkhana Ltd. A/p. Shahji Nagar, Tal. Indapur, Dist. Pune-413106 PAN: AAAAN1256C	DCIT, Circle-14, Pune	2007-08

29	2200/PUN/2017	ACIT, Ahmednagar Circle, Ahmednagar	Ashok Sahakari Sakhar Karkhana Ltd . Ashoknagar, Tal. Shrirampur Dist. Ahmednagar Pin-413 713 PAN : AACCA3452B	1998-99
30-32	2213/PUN/2017 2214/PUN/2017 2647/PUN/2017	Krantiagrani Dr. G.D. Bapu Lad SSK Ltd. At & Post. Kundal, Tal. Palus, Dist. Sangli-416309 PAN: AAAAK1277C	ACIT, Circle-2, Sangli	2013-14 2014-15 2012-13
33	2263/PUN/2017	Karmayogi Shankarraoji Patil SSK Ltd. A/p. Mahatma Phule Nagar, Tal. Indapur, Dist. Pune-413106 PAN: AAAAI0225N	ITO, Ward 6(1), HQ, Pune.	2013-14
34	2267/PUN/2017	Shri Vithal Sahakari Sakhar Karkhana Ltd. A/p. Venunagar, Gurusale, Tal. Pandharpur. Dist. Solapur. PAN: AAAAS3892H	ACIT, Circle-1, Solapur.	2009-10
35	2282/PUN/2017	M/s. Ashok Sahakari Sakhar Karkhana Ltd. Ashok Nagar, Shrirampur, Ahmednagar. PAN: AACCA3452B	Addl. CIT, Special Range-2, Aurangabad.	1998-99
36	2361/PUN/2017	Shree Shankar Sahakari Sakhar Karkhana Ltd. Sadashivnagar, Tal. Malshiras, Dist. Solapur Pin-413 111 PAN : AAAAS3735M	ACIT, Circle-1, Solapur.	2012-13
37	2507/PUN/2017	Siddeshwar SSK Ltd. Maniknagar, Tq. Sillod, Dist. Aurangabad, Pin-431135 PAN: AABAS6026L	DCIT, Circle-1, Aurangabad.	1995-96

38	2770/PUN/2017	Shree Siddeshwar SSK Ltd. Tikekarwadi. Tal. North Solapur, Dist. Solapur, PAN:AAAAS3729F	DCIT, Circle-1, Solapur.	2008-09
39	2521/PUN/2017	The Sanjivani (Takli) Sahakari Sakhar Karkhana Ltd. Sahajanandnagar, Shingnapur, Tal. Kopergaon, Dist. Ahmednagar Pin-423 603 PAN: AAAAT3291R	ACIT, Ahmendnagar Circle, Ahmednagar.	2014-15
40	2547/PUN/2017	Shri Santnath Sahakari Sakhar Karkhana Ltd. A/p. Tulshidasnagar, Tal. Barshi, Dist. Solapur-413402 PAN: AAATB0873D	ACIT, Circle-2, Solapur.	2008-09
41	2610/PUN/2017	Shri Datta Shetkari Sahakari Sakhar Karkhana Ltd. A/p. Datta Nagar, Tal Shirol, Kolhapur-416120 PAN: AAAAS0597B	ACIT, Ichalkranji Circle, Ichalkranji	2014-15
42-46	2635/PUN/2017 2636/PUN/2017 2637/PUN/2017 2638/PUN/2017 2639/PUN/2017	Shri Chatrapati Rajaram Sahakari Karkhana Ltd. Sushant S Phadnis CA 613, E Ward Phadnis Chambers, Shahupuri, 1st Lane, Kolhapur. PAN: AAAAS4219A	ACIT, Circle-2, Kolhapur.	2010-11 2011-12 2012-13 2013-14 2014-15
47	2759/PUN/2017	Shri Makai Sahakari Sakhar Karkhana Ltd. Bhilarwadi, Jinti, Tal. Karmala, Dist. Solapur-413203 PAN: AAAAS6100N	ITO, Ward 2(2), Solapur.	2014-15
48	2782/PUN/2017	Sharad Sahakari Sakhar Karkhana Ltd. Shamrao Patil Yadravkar Nagar, Narande, Tal. Hatkanangale, Dist. Kolhapur-416 110 PAN: AAFAS3961G	DCIT, Ichalkranji Circle, Ichalkranji	2011-12

49-51	2783/PUN/2017 2784/PUN/2017 2785/PUN/2017	Sharad Sahakari Sakhar Karkhana Ltd. Shamrao Patil Yadravkar Nagar, Narande, Tal. Hatkanangale, Dist. Kolhapur-416 110 PAN: AAFAS3961G	ACIT, Ichalkranji Circle, Ichalkranji	2012-13 2013-14 2014-15
52	2788/PUN/2017	Shri Pandurang Sahakari Sakhar Karkhana Ltd. A/p. Shreepur, Tal. Malshiras, Dist. Solapur PAN: AAATS5264J	ITO, Ward 2(2), Solapur.	2014-15
53	3003/PUN/2017	Loknete Balasaheb Desai Sahakari Sakhar Karkhana Ltd. Daulatnagar, Marali. Tal. Patan, Dist. Satara Pin-415211 PAN: AAAAB0362K	ACIT, Satara Circle, Satara.	2007-08
54	547/PUN/2017	Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd. Walwa, Tal. Walwa, Dist. Sangli-416313 PAN: AAAAS6831N	DCIT, Circle-2, Sangli	2004-05
55-56	657/PUN/2017 658/PUN/2017	Hutatma Kisan Ahir Sahakari Sakhar Karkhana Ltd. Walwa, Tal. Walwa, Dist. Sangli-416313 PAN: AAAAS6831N	ACIT, Circle-2, Sangli	2010-11 2011-12
57-58	990/PUN/2017 991/PUN/2017	Sadashivrao Mandlik Kagal Tal. Sahakari Sakhar Karkhana Ltd. Sushant S Phadnis CA 613, E Ward Phadnis Chambers, Shahupuri, 1st Lane, Kolhapur-416001 PAN: AAAAK1300Q	ACIT, Circle-1, Kolhapur	2010-11 2011-12
59	827/PUN/2017	Shri Tatyasaheb Kore Warana Sahakari Sakhar Karkhana Ltd. A/p Warnanagar, Tal. Panhala, Kolhapur-416113 PAN: AAAAT3108M	DCIT, Circle-1, Kolhapur	2010-11

60-62	828/PUN/2017 829/PUN/2017 830/PUN/2017	Shri Tatyasaheb Kore Warana Sahakari Sakhar Karkhana Ltd. A/p Warnanagar, Tal. Panhala, Kolhapur-416113 PAN: AAAAT3108M	ACIT, Circle-1, Kolhapur	2011-12 2012-13 2013-14
63	1318/PUN/2017	Sahakar Maharshi Shankarrao Mohite Patil SSK Ltd. Akluj, Tal. Malshiras, Dist. Solapur-413118 PAN:AAAAS3736J	ACIT, Circle-1, Solapur.	2013-14
64	2558/PUN/2016	ACIT, Circle-1, Aurangabad.	M/s. Sant Eknath Sahakari Sakhar Karkhana Ltd. Eknath Nagar, Tq. Paithan, Dist. Aurangabad. PAN: AADCS9083M	2006-07
65-66	394/PUN/2017 395/PUN/2017	Rajarambapu Patil SSK Ltd. Sakharale, Islampur, Dist. Sangli-415414 PAN:AAAAR0790D	DCIT, Circle-2, Sangli.	2010-11 2011-12
67-68	1021/PUN/2017 1022/PUN/2017	Kranti SSK Ltd. At & Post. Kundal, Tal. Palus, Dist. Sangli-416 309 PAN: AAAAK1277C	ACIT, Circle-2, Sangli.	2010-11 2011-12
69-72	996/PUN/2017 997/PUN/2017 998/PUN/2017 999/PUN/2017	Shri Dudhganga Vedganga Sahakari Sakhar Karkhana Ltd. Sushant S Phadnis CA 613, E Ward Phadnis Chambers, Shahupuri, 1st Lane, Kolhapur-416001 PAN: AAAAS3732N	ACIT, Circle-1, Kolhapur	2010-11 2011-12 2012-13 2013-14
73	869/PUN/2017	Shri Datta Shetkari Sahakari Sakhar Karkhana Ltd. A/p. Datta Nagar, Tal Shirol, Kolhapur-416120 PAN: AAAAS0597B	DCIT, Ichalkrajni Circle, Ichalkranji	2010-11

74-75	870/PUN/2017 871/PUN/2017	Shri Datta Shetkari Sahakari Sakhar Karkhana Ltd. A/p. Datta Nagar, Tal Shirol, Kolhapur-416120 PAN: AAAAS0597B	ACIT, Ichalkrajni Circle, Ichalkranji	2012-13 2013-14
-------	------------------------------	--	--	--------------------

Assessee by : Shri Pramod Shingte- Sr. No.3, 26, 27,
33 & 47
Shri M.K.Kulkarni- Sr. No. 5, 9, 20,
24, 41, 54, 54-56, 59-62 & 73-75
Shri Vikas Agarwal-Sr. No.11-13
Shri Mihir Bapat- Sr. No.14 & 22
Shri Prasanna Joshi- Sr. No.18, 30-32,
63 & 65-68
None- Sr. No.1-2, 4, 6, 7, 8, 10, 15-17,
19, 21, 23, 25, 28, 29, 34, 35, 36, 37,
38, 39, 40, 42-46, 48-51, 52, 53, 57-
58, 64 & 69-72.

Revenue by : Shri Abhijit Haldar

सुनवाई की तारीख / Date of Hearing : 25.09.2019

घोषणा की तारीख / Date of Pronouncement : 01.10.2019

आदेश / ORDER

PER BENCH :

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

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.

2. Out of the 75 appeals, some of the appeals are time barred. We have gone through the reasons given for delay in the affidavit of the appeal with which we are satisfied. As such, the delay in that appeal is condoned and the appeal is admitted for disposal on merits.

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

- i. Excess cane price paid by the assesseees to sugarcane suppliers, 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 assesseees.

Apart from the above two primary issues following issues have also emerged in some of the appeals:

- i. Provision for Vasantdada Sugar Institute (VSI) Contribution.
- ii. Disallowance of contribution towards Sakhar Sangh.
- iii. Disallowance u/s.43B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act')
- iv. Addition on account of interest received.

I. EXCESSIVE SUGARCANE PRICE PAID :

4. A common issue involved in almost all the appeals is against the addition made by the Assessing Officer (AO) towards of excessive sugarcane price paid to members as well as non-members of the respective assessees. The facts common to almost all the appeals are that the assesses are engaged in the business of manufacturing of white sugar. During the course of assessment proceedings, the AO observed that the assessee paid excessive cane price, over and above the Fair and remunerative price (FRP) fixed by the Government, to its members as well as non-members. On being called upon to justify such deduction, the assessee gave certain explanation by submitting that such payment was solely and exclusively in connection with the business and the entire amount was deductible u/s.37(1) of the Income-tax Act, 1961 (hereinafter also called 'the Act'). Relying on the judgment of Hon'ble Supreme Court in the case of *DCIT Vs. Shri Satpuda Tapi Parisar S.S.K. Ltd. and others (2010) 326 ITR 402*, the AO opined that the excessive price paid was in the nature of 'distribution of profits' and hence not deductible. This is how, he computed the excessive cane price paid both to the members and non-members and made addition for the said sum. The Id. CIT(A) in some cases deleted the addition, fully or partly, whilst in others the addition got sustained. This led to filing of the cross appeals both by the assessee as well as the Revenue before the Tribunal.

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 assesses is no more *res integra* in view of the recent judgment of Hon'ble Supreme Court in *CIT Vs Tasgaon SSK Ltd. (2019) 412 ITR 420 (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 assesseees 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.

9. Apart from the above issue, which is common in almost all the appeals in this batch, there are certain appeals having other issues also. We will take up such issues one by one.

II. SALE OF SUGAR AT CONCESSIONAL RATES:

10. This issue has also been raised in most of the appeals under consideration.

11. On a representative basis, we are taking up the appeal filed by Manganga SSK Ltd. in ITA No.344/PUN/2017. The factual matrix of this issue is that the Assessing Officer (AO) observed during the course of assessment proceedings that the assessee had sold/supplied sugar to its members at concessional rate. On being called upon to explain as to why the difference between the Fair Market price and the Concessional price should not be disallowed as it was nothing but distribution of profit, the assessee relied on the judgment in *CIT Vs. Terna Shetkari SSK Ltd. (2008) 168 Taxman 266 (Bom.)* to contend that similar issue was not pressed by the ld. DR before

the Hon'ble Bombay High Court, which implied that the Department acquiesced the decision of the lower courts in allowing relief. Not convinced with the assessee's submissions, the AO opined that the disallowance in the case of *Terna SSK Ltd. (supra)* was made by the AO as non-business expenditure. In his opinion, supply of sugar at concessional rate as against the prevalent market price was nothing but appropriation of profit and in the nature of application of income. Considering the difference between the market price and the concessional price charged *vis-a-vis* the quantity supplied by the assessee to its member cane-growers, the AO worked out an addition of Rs.8,32,433/-. The assessee carried the matter before the Id. CIT(A), who noticed that similar issue has been considered by the Hon'ble Supreme Court in the case of *CIT Vs. Krishna Sahakari Sakhar Karkhana Ltd. and others (2012) 254 CTR 638 (SC)* in which the matter has been restored for ascertaining whether the difference between the Fair Market price and the Concessional price of the sugar supplied to farmers should or should not be added to the total income of the assessee along with consideration of certain other factors. The Id. CIT(A) took note of an order dated 01-03-2006 passed by the Commissioner of Sugar, Maharashtra State, considering the directions issued u/s.79(A) of the Maharashtra Cooperative Societies Rules, 1960 providing, *inter alia*, that the sugar factories shall sell a maximum of 5kg of sugar per month to its members at the rate of levy sugar plus excise duty on free sugar; the factories shall not sell sugar at concessional rate if it has crushed less than 50% during the last season. In the light of the above order of Commissioner of Sugar, Maharashtra State, the Id. CIT(A) held that maximum 5 kg per month per member can be issued at the levy price and the difference between the levy price and the concessional price actually charged from the members up to the limit of 5 kg per month per member should be taxed in the hands of the assessee; and the difference between the market

price and the concessional price on the quantity of sugar sold beyond 5 kg per member per month, should also be added to the total income. To buttress his view, he took support from *Nagarbail Salt Owners Co-operative Society Ltd. (2016) 238 Taxman 689 (Karnataka)* in which the sale proceeds were transferred to an account called 'Distributable Pool Fund Account' for distribution among the members of the Society. After such transfer, the Society offered remaining income to tax, which point of view of the assessee was jettisoned by the Hon'ble High Court. Based on this panorama of facts and the legal position, the Id. CIT(A) reduced the addition to some extent. Aggrieved thereby, the assessee has approached the Tribunal.

12. The assessees under consideration were represented by various Id. Counsel, who made elaborate arguments. They, *inter alia*, relied on certain decisions to bolster the argument that there can be no addition on account of sale of sugar at concessional price to the members of the assessee co-operative societies. It was submitted, by mainly relying on the judgment of Hon'ble Supreme Court in the case of *A. Raman and Co. (1968) 67 ITR 11 (SC)*, that the law does not oblige a trader to make maximum profit out of his trading transactions. Reliance was also placed on certain other decisions including *CIT Vs. Calcutta Discount Co. Ltd. 91 ITR 8 (SC)*; *H.M. Kashiparekh & Co. Ltd. Vs. CIT 39 ITR 706 (Bom.)*; *CIT Vs. Shoorji Vallabhdas & Co. 46 ITR 144 (SC)*; *Rogers Pyatt Shellac & Co. Vs. Secretary of State for India 1 ITC 363 (Cal.)*; *Union of India Vs. Azadi Bachao Andolan 263 ITR 706 (SC)*; and *Vodafone International Holdings B.V. Vs. Union of India 341 ITR 1 (SC)* to contend that the profit charged to tax by the authorities below was not in accordance with law as it amounted to taxing notional income.

13. Per Contra, the ld. DR relied on the judgment of Hon'ble Supreme Court in *Tasgaon SSK Ltd. (supra)* to contend that the authorities below rightly treated the difference between the Fair Market price and Concessional price charged from members of the assessee's co-operative societies as 'appropriation of profit'. For supporting the charging of lower price for sugar sold to members as constituting income, the ld. DR drew an analogy from the case of *Tasgaon SSK Ltd. (supra)* by submitting that, in that case, the price paid over and above the statutory market price for purchase of sugarcane from the members/non-members of the societies has been held by the Hon'ble Supreme Court as 'appropriation of profit' and hence chargeable to tax. He submitted that there is no qualitative difference between the two situations viz., the first in which sugarcane is purchased from the members at excessive price and the differential amount is charged to tax as 'appropriation of profit' and the second in which sugar is supplied at concessional price and the difference between the Fair Market Price and the Concessional Price is charged to tax again as 'appropriation of profit'.

14. We have heard both the sides and gone through the relevant material on record. Before proceeding further, we consider it expedient to mention that the issue of sale of sugar to members of a cooperative society at concessional price came up for consideration before various Benches of the Tribunal across the country. The Pune Benches of the Tribunal vide its order dated 08-08-1996 in *Chhatrapati Sahu SSK Ltd. Vs. DCIT (ITA No.1924/PN/1990)*, a copy placed on record, decided this issue in favour of the assessee by relying on the judgment in the case of *A. Raman & Company (supra)*. Thereafter, several orders came to be passed by various benches of the Tribunal. All such orders were challenged by the Revenue before the respective Hon'ble High Courts. In the case of *Terna SSK Ltd. (supra)*, one of the issues raised by the Department

was against the deletion of addition made on account of sugar supply to members at concessional rate. The ld. Counsel for the Revenue did not press this issue before the Hon'ble High Court, as a result of which such ground was dismissed. Various orders passed by the Tribunal came up for adjudication before the concerned Hon'ble High Courts. The Hon'ble Bombay High Court in *CIT Vs. Kisanveer Satara Sahkar Karkhana Ltd. in ITA No.930/2008* vide its judgment dated 30.6.2009 decided this issue in favour of the assessee. In another judgment in *CIT Vs. Krishna Sahakari Sakhar Karkhana Ltd. (ITA No.225/2009)*, the Hon'ble Bombay High Court again decided this issue in favour of the assessee vide its judgment dated 30-06-2009. The Revenue approached the Hon'ble Supreme Court against all such judgments passed by the High Courts. Vide its common judgment dated 25.09.2012 in *CIT Vs. Krishna Sahakari Sakhar Karkhana Ltd. (supra)*, as a lead matter and covering several other cases in which similar issue was decided in favour of the assessee, the Hon'ble Supreme Court set-aside the judgments passed by the Hon'ble High Courts and restored the matter to the CIT(A) for deciding the question afresh as to whether the difference between the actual price of sugar sold in the market and the price of sugar sold by the assessee to its members at concessional rate should or should not be added to the total income of the assessee. Apart from the above question, the Hon'ble Supreme Court further directed the CIT(A) to take into account whether the above mentioned practice of selling sugar at concessional rate has become the practice or custom in the sugarcane industry ?; whether any resolution has been passed by the State Government supporting the practice ? It further held that the CIT(A) before reaching any conclusion would also consider on what basis the quantity of sugar was being fixed for sale to farmers and growers/members for each year on month to month basis apart from Diwali.

15. On an analysis of the position discussed above, it clearly emerges that after the advent of the Hon'ble Supreme Court judgment in *Krishna SSK Ltd. (supra)*, the earlier judgments rendered by the Hon'ble High Courts and the orders passed by the Tribunal in favour of the assessee do not continue to hold the field anymore. Our attention has not been drawn towards judgment of any Hon'ble High Court or order of the Tribunal in which the issue under consideration has been decided after considering the judgment of the Hon'ble Supreme Court in *Krishna SSK (supra)*, which thereby renders the issue in question as virgin.

16. At this stage, it is relevant to note that the Hon'ble Supreme Court in *Tasgaon SSK Ltd. (supra)* had an occasion to deal with a connected issue of purchase of sugarcane by the sugar factories from its members at excessive price, which we have discussed hereinabove. The AOs in that group of matters had opined that the difference between the price paid as per clause 3 of the Control Order, 1966 determined by the Central Government, being, the Statutory Minimum Price (SMP) and the price determined by the State Government under clause 5A of the Control Order, 1966, being SAP/Additional Price, was in the nature of 'distribution of profits' and hence, not deductible as expenditure. Such an issue came to be decided by the Hon'ble High Courts in favour of the assessee. When the Revenue brought the matter for consideration before the Hon'ble Supreme Court, their Lordships held that the SMP determined under clause 3 of the Control Order, 1966 which is paid at the beginning of the season is deductible in the entirety but the difference between the SMP determined under clause 3 and SAP/Additional Price determined under clause 5A has an element of 'distribution of profit', which cannot be allowed as deduction. That is how, the Hon'ble Supreme Court remitted the matter to the file of AO for

considering the modalities and manner in which SAP/Additional price is decided and to carry out an exercise of considering the 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 Control Order, 1966 and thereafter determine as to what part of the differential amount would form part of the 'distribution of profit.' Relevant discussion has been made in Para 9.4 of the judgment in which it has been categorically held that: "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.' The matter was sent back to the AO with certain directions to find out the element of appropriation of profits embedded in the price fixed under clause 5A.

17. In view of the above judgment in the case of *Tasgaon SSK Ltd.(supra)*, it is clear that the Hon'ble Apex Court has, in principle, held that the excessive cane price paid to the members is, to some extent, in the nature of 'appropriation of profit' which should be charged to tax in the hands of the assessee. When we consider the nature of transaction dealt with by the Hon'ble Supreme Court, being, purchase of sugarcane as raw material in the sugar industry at excessive price in *juxtaposition* to the sale of sugar as finished product to members at concessional price, we find that both of them directly affect the gross profit of the sugar mills. If a part of the excessive purchase price of sugarcane paid has been held to be in the nature of 'appropriation of profit', then obviously a part of the concession given to

members on sale of sugar, by the same standard and on the same parity of reasoning, would also have to be considered as 'appropriation of profit'.

18. At this juncture, it is pertinent to note that the AO has held that the amount in question is disallowable not u/s 37(1) of the Act, but: 'supply of sugar at concessional rate, as against the prevalent market price, is nothing but an *appropriation of profit and in the nature of application of income*'. Thus, the view point of the AO of 'appropriation of profit' by the assessee to its members by means of selling sugar at concessional price is based on the premise that a co-operative society and its members are not different from each other in the co-operative structure.

19. In case we proceed with the presumption that the assessee and its members are separate from each other and the transaction is between two independent parties, then patently, there can be no question of earning any income by selling sugar at a price lower than the market price. Tax is levied on income earned and not on loss of potential income. Neither the AO has invoked any specific provision nor the ld. DR has invited our attention towards any provision in the Act warranting the addition in the given circumstances. Further, it is not anyone's case that the provisions of section 92C are attracted.

20. Coming back to the AO's case of 'appropriation of profits', which point of view has been noted with approval by the Hon'ble Supreme Court in para 9.4 of the judgment in *Tasgaon (supra)* holding excess purchase price of sugarcane to be '*certainly be and/or said to be an appropriation of profit*', we find that such a condition of appropriation of profit pre-supposes some profit which is appropriated directly or indirectly amongst the members. One needs

to draw a line of distinction between two situations, viz., the first in which profit is earned from business operations and is passed on to members and the second, in which potential profit is not earned from members or to simply put, a case of loss of potential profit. Whereas, the appropriation of profit is possible in the first situation, which is akin to the purchase of sugarcane from the members at excessive price resulting in diverting the profit earned from normal business operations to the members in the form of excess price of sugarcane, the appropriation of profit is not possible in the second situation, which is akin to the sale of sugar at concessional rate. The second situation of selling sugar at concessional rate is in the nature of foregoing potential profit which would have been otherwise earned had sugar been sold at market price. As the second situation has the effect of foregoing potential profit, it cannot be equated with an appropriation of profit except where the sale of sugar is made at below the actual cost.

21. Again apropos the view point of the AO in treating the co-operative society and its members as one and the same thing with the theory of appropriation of profit, we underscore the settled legal position that no one can make profit from self. In this regard, it will be befitting to note the judgment of the Hon'ble Summit Court in *Sir Kikabhai Premchand vs. CIT (1953) 24 ITR 506 (SC)*, in which the assessee employed the method of valuing the closing stock at the cost price. The deeds of trust were valued for the purpose of stamp at the market value of the shares and silver bars prevailing at the dates of their execution. The assessee, however, showed the transfer of these shares and silver bars to the trustees in the books of account at the cost price thereof by contending that the market value of the said shares and silver bars, on which the stamp duty was based, could not be the basis for computing his income from the stock-in-trade thus transferred. The Income

Tax Officer did not accept this contention and assessed the profit at the difference between the cost price of the said shares and silver bars and the market value thereof at the date of their withdrawal from the business. The AAC, the Tribunal as also the Hon'ble High Court rejected the contention of the assessee. When the matter was brought to the Hon'ble Apex Court, it held, by a majority view that : `The appellant was right in entering the cost value of the silver and shares at the date of the withdrawal, because *it was not a business transaction and by that act the business made no profit or gain, nor did it sustain a loss*, and the appellant derived no income from it. In the present case disregarding technicalities it is impossible to get away from the fact that the business is owned and run by the assessee himself. In such circumstances, it is wholly unreal and artificial to separate the business from its owner and treat them as if they were separate entities trading with each other and then by means of a fictional sale introduce a fictional profit which in truth and in fact is non-existent. Cut away the fictions and *you reach the position that the man is supposed to be selling to himself and thereby making a profit out of himself which on the face of it is not only absurd but against all canons of mercantile and IT law.*' The sequitur is that no person can earn profit from himself and there can be no contemplation of profit when the owner withdraws goods from the business. Such withdrawal of goods needs to be valued at cost price only and not the market price.

22. Reverting to the facts of the extant case, we find that the AO has made out a case of appropriation of profit on sale of sugar to members at concessional rate. We have noted above that the appropriation of profit presupposes profit which can be appropriated to the members of the co-operative society. In so far as the purchase of sugarcane from members at higher price is concerned, it clearly amounts to business profit percolating to the members

in the shape of excess cane price given to the members. For example, if the SMP of sugarcane is Rs.100/- and a sugar factory is purchasing sugarcane from its members at say, Rs.120/-, in a way it is passing on its profit earned from normal business transactions to its members to the extent of excess price paid. This is the essence of the judgment in the case of *Tasgaon SSK Ltd. (supra.)*. But the transaction of sale of sugar to members at concessional rate cannot be considered as appropriation of profit, but a case of not earning some potential profit. To illustrate, if sugar is sold at concessional price at Rs.80/- against the prevalent price of Rs.100/-, what the sugar mill is doing is that it is charging its members less by Rs.20/-, *vis-a-vis* sale made to non-members. This differential amount of Rs.20/- is loss of potential profit and not appropriation of profit. Going by the *ratio* in the case of *Sir Kikabhai (supra)*, the assessee society cannot earn profit from the sale of sugar to its members.

23. It is further relevant to note that difference between the market price of sugar and concessional sale price may entail two situations. The first one is of simplicitor loss of potential profit and second one is of actual loss of profit when sugar is sold to members at below its cost price. Whereas, the simplicitor loss of potential profit cannot be termed as appropriation of profit, sale of sugar to members at below its cost price results in appropriation or distribution of profits earned from normal business operations to members in the garb of sale at a price below the cost price. The position can be understood with the help of an example. Suppose market price of sugar is Rs.100/- and the cost price is Rs.80/-. If the assessee sells sugar at concessional rate to its members at, say, Rs.85/- per kg., it is obviously recovering its cost of Rs.80/- in addition to earning profit of Rs.5/-. In such a situation, the differential amount of Rs.15/- (Rs.100 – Rs.85) cannot be

charged to tax because it is a case of loss of potential profit and not appropriation of profit. If, on the other hand, in the given scenario of market price of sugar at Rs.100, the assessee sells sugar at concessional rate of Rs.75/- to its members, which is below its own cost of Rs.80/-, then the differential amount of Rs.5/- (Rs. 80 minus Rs.75) would obviously be 'appropriation of profit' to members that was earned from normal business operations and passed on to members in the shape of sale price below the cost price. Whereas such differential amount of Rs.5/- is 'appropriation of profit' to members which should be charged to tax, the difference of Rs.15 (Rs.100 minus Rs.85) is loss of potential profit which cannot be characterized as appropriation of profit so as to magnetize taxability.

24. The ld. AR has relied on the judgment of Hon'ble Supreme Court in the case of *A. Raman & Co. (supra)* by contending that the law does not require a trader to make maximum profit and hence there can be no taxability on the basis of notional profit which was not actually earned from the members. We do agree with this proposition provided it is not a case of appropriation of profit. We have discussed hereinabove that in case of transaction between two independent parties, the assessee is not obliged to earn maximum profit. However, this proposition is not attracted in case the transaction is not commercial or genuine. Such a proposition cannot be extended to the cases where the amount of profit is intentionally allowed to be passed on to the members or owners. In the same case of *A. Raman & Co. (supra)* and in the same para no. 8, the immediately next line is an exception to the general rule whereby their Lordships noted that: '*By adopting a device, if it is made to appear that income which belonged to the assessee had been earned by some other person, that income may be brought to tax in the hands of the assessee.*' Precisely, this is the proposition in the case of *Tasgaon SSK Ltd. (supra)* as

well that an income belonging to the assessee which has been appropriated to the members should be brought to tax in the hands of the assessee only. Similar is the position in so far as sale of sugar at concessional rate to members below the cost price is concerned in as much as the income to that extent which was earned by the assessee from its normal business operations shall be passed on to the members in the form of sale of sugar at a rate lower than its cost price.

25. The ld. CIT(A) in the instant batch of appeals has confirmed the addition towards the difference between the Levy price and the concessional price (upto 5 kg. per member per month) and to the extent of difference between the Market price of sugar and Concessional price (over and above 5kg. per member per month). In this process, the assessees got taxed even for the potential profit to the extent of difference between the cost price and market/levy price, as the case may be. Ergo, we hold that such a straightway difference between the market/levy price and the concessional price of sugar cannot be construed as appropriation of profit leading to addition as has been extantly done. The impugned orders to this extent are set aside and the matters are restored to the file of the respective AOs for first ascertaining the cost price of sugar to each assessee and then make addition on this issue by treating it is as a case of appropriation of profit only to the extent of the concessional sale price which is below the cost price. However, it is clarified that in determining cost price of sugar to the factory, not only all the direct costs but all the indirect costs should also be taken into consideration. In other words, all items of debit to the Trading and Profit and loss account would constitute cost base. Needless to say, the assessee will be allowed reasonable opportunity of hearing in such fresh proceedings on this issue.

III. PROVISION FOR VASANTDADA SUGAR INSTITUTE (VSI) CONTRIBUTION :

26. Another issue raised in some of the appeals is against the confirmation of disallowance of contribution to Vasantdada Sugar Institute (VSI). The AO observed that the assessee made provision for Vasantdada Sugar Institute (VSI) contribution and claimed weighted deduction at 125% u/s.35(1)(ii) of the Act. The said amount was not paid to the institute. The same being only in the nature of provision, the AO did not allow deduction u/s.35(1)(ii). The ld. CIT(A) decided this issue in favour of the assessee by following an order passed by the Pune Benches of the Tribunal in the case of Bhima S.S.K. Ltd. (ITA No.1414/PUN/2000).

27. 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.

IV. Disallowance of contribution towards Sakhar Sangh.

28. The Ld. AR of the assessee submitted that this issue is covered by the decision of the Co-ordinate Bench of the Tribunal, Pune 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. The Tribunal on this issue has held and observed as under:

“31. In ITA No. 280/PUN/2017 (at Sr. No. 42) the assessee has assailed addition of Rs.13,35,270/- on account of contribution made to Sakhar Sangh. The contentions of the assessee is that Maharashtra Sakhar Sangh is a federal body of all the sugar factories. The Sangh is rendering various services to all sugar factories such as acting as intermediary for purchase of Gunny bags, making available to sugar factories imported sulphur and other such items required by various sugar factories. The contentions of the assessee is that the contribution to Sakhar Sangh is not voluntary but are in accordance with the instructions issued by Commissioner of Sugar, Maharashtra State. The Assessing Officer disallowed assessee’s claim of deduction u/s. 35(1) in respect of contribution made to Sakhar Sangh. The Commissioner of Income Tax (Appeals) in appellate proceedings restored the issue back to the file of Assessing Officer to verify whether the deduction claimed by the assessee u/s. 35(1) is by virtue of any notification by Central Government, if so the same should be allowed to the assessee.

We do not find any infirmity in the directions given by the Commissioner of Income Tax (Appeals) in allowing the claim of assessee u/s. 35(1) subject to verification. We further observe that in view of directions given by the Commissioner of Income Tax (Appeals) the ground raised by the assessee assailing disallowance and adding back of contribution on account of Sakhar Sangh is misconceived. The same is dismissed, accordingly.”

Respectfully following the same parity of reasons rendered by the Tribunal in the decision referred herein above, we dismiss this ground.

29. In some of the appeals, there are some new issues i.e. (i) ‘disallowance u/s.43B of the Act’ and (ii) ‘addition on account of interest received’ which we would adjudicate separately by following paragraphs:

V. Disallowance u/s.43B of the Act :

30. The Assessing Officer observed from the chart of computation of deduction allowable u/s.43B (schedule to the audit report in form 3CD) that the assessee has computed the amount of allowable deduction in respect of the Cane purchase tax and the amount of Rs.1,28,32,666/- was deducted

from the net profit to arrive at the total income. The Assessing Officer after gone through the accounts, has observed that the assessee during financial year 2011-12 relevant to assessment year 2012-13 has paid cane purchase tax of only Rs.1,32,15,400/- whereas, the assessee has claimed as if Rs.2,47,72,974 has been actually paid and in the computation of income, the amount to be deducted u/s.43B of the Act is Rs.12,75,092/- as against Rs.1,28,32,666/- claimed by the assessee. Accordingly, the Assessing Officer made an addition of Rs.1,15,64,068/- on account of excess claim of deduction u/s.43B of the Act.

31. During First Appellate Proceedings, the Ld. CIT(A) on the basis of Tax Audit Report (TAR) observed that the assessee claims to have paid the dues of Rs.62,49,936/- of the preceding year before filing the return for this year and therefore, deduction of Rs.62,49,936/- claimed by the assessee in his computation is actually to be added back and a further disallowance of Rs.33,07,638/- is to be made. Accordingly, the Ld. CIT(Appeals) deleted the disallowance of Rs.1,15,64,048/- made by the Assessing Officer as it was supposedly only towards cane purchase tax and the Assessing Officer is directed to disallow Rs.95,57,574/- (Rs.62,49,936/- + Rs.33,07,638/-) u/s.43B of the Act.

32. At the time of hearing, the Ld. AR of the assessee submitted that the issue may be restored to the file of Assessing Officer for verification and for determination of quantum.

33. The Ld. DR has not raised any objection regarding restoring the issue to the file of Assessing Officer for verification and determination of quantum.

34. We have perused the case records and heard the rival contentions. We have also given considerable thought to the orders of the Ld. CIT(Appeals) as well as the Assessing Officer. We are of considered view that this issue needs verification regarding computation of income and Tax Audit Report regarding working of disallowance and also classification on quantum. Thus, in view of the facts and circumstances, we set aside the order of the Ld. CIT(Appeals) and remit the matter back to the file of Assessing Officer for verification and for determination of quantum in compliance with the principle of natural justice. Thus, **this part of the ground raised by the assessee is allowed for statistical purposes.**

VI. Addition on account of interest received

35. The Assessing Officer observed that as per the 26AS, the assessee has received an interest of Rs.5,72,300/-. However, from the P & L account, no such amount is credited and accordingly, the same is added to the total income of the assessee.

36. During First Appellate Proceedings, the assessee submitted the written submissions dated 14.02.2017. The contentions of the assessee was that the amount of interest income has been offered to tax in next assessment year but the assessee has not filed any evidence regarding the same and credit of TDS has not been taken by the assessee as the assessee has contended that in 26AS no such interest was reflected at the time of filing return. Therefore, the Ld. CIT(Appeals) rejected the contentions of the assessee and upheld the findings of the Assessing Officer.

37. At the time of hearing, the Ld. AR of the assessee submitted that the issue may be restored to the file of Assessing Officer for verification and for determination of quantum.

38. The Ld. DR has not raised any objection regarding restoring the issue to the file of Assessing Officer for verification and determination of quantum.

39. We have perused the case records and heard the rival contentions. We have also given considerable thought to the orders of the Ld. CIT(Appeals) as well as the Assessing Officer. We are of considered view that this issue needs verification regarding credit of TDS as well as whether the interest income has been offered to tax or not. Thus, in view of the facts and circumstances, we set aside the order of the Ld. CIT(Appeals) and remit the matter back to the file of Assessing Officer for verification and for determination of quantum in compliance with the principle of natural justice. Thus, **this part of the ground raised by the assessee is allowed for statistical purposes.**

40. 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 01st day of October, 2019.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st October, 2019.
GCVSR/SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Concerned CIT(Appeals)
4. The Concerned CIT.
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	25.09.2019	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		