

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.1576/PUN/2018

निर्धारण वर्ष / Assessment year : 2015-16

Sharad Sahakari Sakhar Karkhana Limited,
Shamrao Patil Yadravkar Nagar,
Narande, Tal. Hatkanangale,
Dist. Kolhapur.

..... अपीलार्थी /
Appellant.

PAN : AAFAS3961G.

बनाम v/s

The Asst.Commissioner of Income Tax,
Ichalkaranji Circle, Ichalkaranji,
Kolhapur.

..... प्रत्यर्थी /
Respondent

Assessee by : Ms. Deepa Khare.

Revenue by : Pravin Chavan.

सुनवाई की तारीख / Date of Hearing : 10.10.2019	घोषणा की तारीख / Date of Pronouncement: 18.10.2019
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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) – 2, Kolhapur dt.09.08.2018 for the assessment year 2015-16.

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 filed its return of income for A.Y. 2015-16 on 26.09.2015 declaring total taxable income at Rs.Nil. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.26.12.2017 and

the total income before set off of losses was determined at Rs.2,53,56,787/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt. 09.08.2018 (in appeal No.ICH/106/2017-18) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

“1. On facts and in circumstances of the case learned CIT (Appeals) has erred in confirming the additions made by the A.O. on account of final cane price paid for the purchase of sugar cane. The CIT (A) has failed to appreciate the price paid was as per quantity supplied and hence cannot be held as "Distribution of Profits".

2. On facts and in circumstances of the case Learned CIT (Appeals) has failed to appreciate that the price paid by the assessee factory was pari material with the price paid by other factories and hence allowable under section 37(1) of the Income Tax Act 1961.

3. On facts and in circumstances of the case the Learned CIT (A) appeals has appreciate that the assessee has not received any income from sale of sugar at concessional rate as such there accrues no income to the assessee and hence no tax can be levied on any amount which is not actual income of the assessee as held by the Hon'ble Supreme Court in case of CIT(A) V/s. A. Raman & Co., as reported in 67 ITR 11. Thus the Hon'ble CIT (Appeals) has erred in coming to a conclusion that the discount or sugars sold at concessional price is nothing but gift to members and not based on commercial business expediency.”

3. Before me, at the outset, Ld.A.R. submitted that the issue involved in the present grounds is with respect to the additions on account of alleged excess sugar cane purchase price paid and sale of sugar at concessional rate to the members of the assessee. She submitted that identical issue arose before the Co-ordinate Bench of the Tribunal in assessee's own case in A.Ys. 2011-12 to 2014-15 and other assessees and the Co-ordinate Bench of the Tribunal vide order dated 01.10.2019 has restored the issue back to the file of AO with necessary directions. In support of her aforesaid contentions, she pointed to the name of the assessee as appearing in the order at Srl.No.48 to 51 at Pages 6 and 7 of the order. She further submitted that there are no changes in the facts of the case in the year under consideration and that of assessee's own case

in A.Ys. 2011-12 to 2014-15 and therefore following the order of Tribunal dt.01.10.2019 in assessee's own case for earlier years and other assessees (supra) the issue be decided on similar lines. Ld. D.R. on the other hand did not object to the contentions made by Ld.A.R. but however supported the order of lower authorities.

4. I have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the payment of excess cane price purchased by the assessee. I find that the Co-ordinate Bench of the Tribunal in the group of cases (including the present assessee) order dated 01.10.2019 had remitted the issue back to the file of AO in view of judgment of the Hon'ble Apex Court in the case of CIT Vs. Tasgaon SSK Ltd. (2019) 412 ITR 420 (SC). The Co-ordinate Bench of the Tribunal has further directed the AO to decide the issue in the line of the aforesaid decision of the Hon'ble Apex Court. The relevant observations of the Tribunal reads as under :

“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.

5. Vide ground No.3, the issue raised is with respect to sale of sugar by the assessee to its members at concessional rate. AO held the sale of

sugar at concessional rate by the assessee to its members to be appropriation of profit and not an expenditure and accordingly disallowed the claim of expenditure made by assessee. I find that identical issue arose in assessee's own case and the group cases cited supra before the Tribunal. The Tribunal vide order dt.01.10.2019 (supra) restored the issue back to the file of AO to decide as per the directions contained therein by observing as under :

“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.

6. Before me, no contrary decision in support of Revenue has been cited by Ld.D.R nor has he pointed to any distinguishing facts in the year under consideration and that of assessee's own case in earlier years i.e., A.Ys. 2011-12 to 2014-15 and other assessees which has been decided by the Co-ordinate Bench of the Tribunal vide order dt.01.10.2019 (supra). Further Ld.D.R. has also not placed any material to demonstrate that the decision of the Tribunal in the case of assessee's own case in earlier years and other assessees (supra) has been set aside or over ruled by higher Judicial Forum. In view of the aforesaid facts, I, following the decision of Co-ordinate Bench of the Tribunal in assessee's own case in earlier years

and other assessees (supra) and for similar reasons, restore the issue to the file of AO to decide the issue as per the directions given in assessee's own case in earlier years (supra). 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. In view of my decision to restore the issue to the file of AO, I am not adjudicating on merits the grounds of the appeal raised by the assessee. **Thus, the grounds of assessee are allowed for statistical purposes.**

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

Order pronounced on 18th day of October, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 18th October, 2019.

Yamini

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

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

आदेशानुसार/ BY ORDER

// True Copy //

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