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

BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1178/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Madhukar Sahakari Sakhar Karkhana Ltd.,
Jivram Nagar, Nhavi Marg,
Faizpur, Jalgaon - 425524

PAN : AAAAM1574A

.......अपीलार्थी / Appellant

बनाम / V/s.

The Dy. Commissioner of Income Tax,
Circle – 1, Jalgaon

......प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1338/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

The Dy. Commissioner of Income Tax,
Circle – 1, Jalgaon

.......अपीलार्थी / Appellant

बनाम / V/s.

Madhukar Sahakari Sakhar Karkhana Ltd.,
Faizpur Karkhana Sight, Faizpur,
Yawal, Jalgaon – 425502

PAN : AAAAM1574A

......प्रत्यर्थी / Respondent

Assessee by	:	N O N E
Revenue by	:	Shri Rajesh Gawali

सुनवाई की तारीख / Date of Hearing	:	03-03-2020
घोषणा की तारीख / Date of Pronouncement	:	05-03-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These cross appeals by the assessee and the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-2, Nashik dated 29-03-2017 for the assessment year 2013-14.

2. None has appeared on behalf of the assessee. The several notices of appeal were sent to the assessee through RPAD on the address mentioned in Form No. 36. Despite service of notices, none appeared to represent the assessee. The assessee has filed written submission on 09-08-2019. Therefore, the appeal is taken up for adjudication with the assistance of ld. DR and the material available on record.

3. We find the issues raised in both the appeals are similar basing on identical facts, therefore, we proceed to hear both the appeals together. First we shall take up appeal in ITA No. 1178/PUN/2017.

4. The facts of the case as emanating from records are: The assessee is a Co-operative Society engaged in manufacturing of sugar and industrial alcohol. The assessee company is registered under the Maharashtra Co. Op. Society's Act, 1960. It is a co-operative sugar factory situated at Nhavi Marg, Faizpur, Taluka Yawal, Distt.-Jalgaon.

5. Shri Rajesh Gawali, the ld. DR submitted that the issue raised in ground No. 1 relates to the issue of addition of Rs.4,46,88,714/- on

account of excess sugarcane price made by the AO. Relating to ground No. 2, the ld. DR mentioned that the issue relating to H & T expenses allowable u/s. 37 of the Act. The ld. DR submitted that the issue raised in appeal by the assessee is identical to the one already decided by the Tribunal in the case of Majalgaon SSK Ltd. Vs. ACIT in ITA No. 308/PUN/2018 for assessment year 2013-14 decided on 14-03-2019. Further, the Tribunal while deciding batch of appeals has restored this issue to the file of Assessing Officer to decide the issue in light of decision of Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Tasgaon Taluka S.S.K. Ltd. reported as 412 ITR 420 and prayed to restore the file to Assessing Officer with similar directions.

6. The assessee in appeal has assailed the order of Commissioner of Income Tax (Appeals) in disallowing excess cane price paid to the cane growers. The assessee is a sugar factory engaged in manufacturing of white sugar from sugar cane. The issue of payment of excess sugar cane price paid to the cane growers has been dealt with by the Co-ordinate Bench of Tribunal in bunch of appeals viz. DCIT vs. Vasant Rao Dada Patil SSK Ltd. vide ITA Nos.50 to 52/PUN/2012 for the assessment years 1992-93, 1994-95 & 1996-97 respectively decided on 20.03.2019 and in the case of ACIT Vs. Shri Shankar SSK Ltd. in ITA No. 382/PUN/2014 for assessment year 2010-11 decided on 13-06-2019. In the above batch of appeals the Tribunal has restored the issue to the file of Assessing Officer to decide this issue in line with the directions of Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Tasgaon Taluka S.S.K. Ltd. (supra). In the present appeal the assessee has tried to distinguish the decision of Hon'ble Apex Court in the case of Commissioner

of Income Tax Vs. Tasgaon Taluka S.S.K. Ltd. (supra). The Co-ordinate Bench in the case of ACIT Vs. Shri Shankar SSK Ltd. (supra) after considering the binding judgment of Hon'ble Supreme Court in the case of CIT Vs. Tasgaon Taluka S.S.K. Ltd. (supra) has restored the issue to the file of Assessing Officer with liberty to raise all contentions before the Assessing Officer. The relevant extract of the order reads as under :

> *"5. The Co-ordinate Bench (supra) after considering the binding judgment of Hon'ble Supreme Court in the case of CIT Vs. Tasgaon Taluka S.S.K. Ltd. reported as 103 taxmann.com 57, has decided this issue as under :*
>
> > *"5. We have heard both the sides and gone through the relevant material on record. There is consensus ad idem between the rival parties that the issue of payment of excessive price on purchase of sugarcane by the assesses 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 aforenoted 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."

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

7. Shri Prasanna Joshi representing the assessees submitted that in these bunch of appeals there is segment of appeals wherein the ratio laid down by the Hon'ble Apex Court in the case of CIT Vs. Tasgaon Taluka S.S.K. Ltd. (supra) does not apply. The ld. AR submitted that the Statutory Minimum Price (SMP) regime came to an end on 22-10-2009. Thereafter, the cane price paid to farmers from Financial Year 2009-10 was on the basis of Fair and Remunerative Price (FRP). The ld. AR further explained the purpose of fixing FRP and sought directions that the issue relating to payment to cane growers by the assessee towards purchase of sugarcane post October, 2009 should be made independent of the directions in the case of CIT Vs. Tasgaon Taluka S.S.K. Ltd. (supra). The ld. AR contended that in the changed scenario, w.e.f. assessment year 2009-10 it would be difficult to give effect to the decision of Hon'ble Apex Court. The ld. AR further pointed that the Co-ordinate Bench of Tribunal in the case of bunch of appeals lead case being Siddheshwar Sahakari Sakhar Karkhana Ltd. Vs. DCIT in ITAT No. 1210/PUN/1997 decided on 01-05-2019 has dealt with this issue.

We have considered the submissions of ld. AR, the appeals are restored back to the file of Assessing Officer leaving the question open for consideration and examination by the Assessing Officer. The assessees are at liberty to raise all their contentions before Assessing Officer.

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

7. Thus, 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 cases of ACIT Vs. Shri Shankar SSK Ltd. (supra). The Assessing Officer is further directed to consider the contentions of assessee with respect to SMP vis-a-vis FRP regime. The Assessing Officer shall decide the issue, after affording reasonable opportunity of hearing to the assessee, in accordance with law.

8. Ground No. 2 relating to disallowance of harvesting and transportation charges u/s. 37 of the Act of Rs.14,73,65,944/-. In some of the appeals, the issue of disallowance of cane harvesting and

transportation expenditure incurred by the assessee has been raised. We find that this issue is squarely covered in favour of the assessee by CBDT Circular No. 6/2007, dated 11-10-2007. For the sake of ready reference the same is reproduced here-in-below :

> *"1. Instances have come to the notice of the Board wherein Assessing Officers have disallowed the claim of harvesting and transportation expenses incurred by the Co-operative sugar mills for procuring sugarcane from farmers, who are members of such Co-operative Sugar Mills and who are bound under an agreement to supply the sugarcane exclusively to the concerned sugar Mill.*
>
> *2. The issue of allowability of such expenses in the case of Co-operative Sugar Mills has been examined by the Board. These expenses are incurred by the Sugar Mills for ensuring an adequate and sustained supply of freshly cut sugarcane that is an essential input for the continuous running of such Mills. These expenses are, therefore; incurred for a commercial expediency and are prima facie wholly and exclusively for the purpose of business. Such expenses are, therefore, allowable in the computation of the income of the Co-operative Sugar Mills."*

9. Thus, in view of CBDT Circular (supra) harvesting and transportation expenditure are allowable, the issue in ground No. 2 is allowed.

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

ITA No. 1338/PUN/2017, (A.Y. 2013-14)

11. In the present case facts being identical, the findings given by the Co-ordinate Bench on the above said issue would *mutatis mutandis* apply in the present case. Ground Nos. 1 and 2 raised in present appeal are corresponding ground Nos. 1 and 2 raised in the appeal in ITA No. 1178/PUN/2017 by the assessee. Accordingly, ground Nos. 1 and 2 are allowed for statistical purpose.

12. Ground Nos. 3 and 4 are general in nature, hence, require no adjudication.

13. In the result, both the appeals by the assessee and Revenue are allowed for statistical purpose.

Order pronounced in the open court on 05th March, 2020.

Sd/-	Sd/-
(D. Karunakara Rao)	(S.S. Viswanethra Ravi)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05th March, 2020
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) – 2, Nashik
4. The Pr. CIT – 2, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True copy //

आदेशानुसार / BY ORDER,

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