

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

(Through Virtual Court)

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

**आयकर अपील सं. / ITA No.1040/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15**

ACIT, Circle-1,
Kolhapur.

..... आवेदक/Applicant

बनाम / V/s.

Kolhapur Zilla Sahakari Dudh
Utpadak Sangh Ltd.,
B-1, MIDC Gokul Shirgaon,
Kolhapur-416003.

PAN: AAAAK0230D

.....प्रत्यर्थी / Respondent

Revenue by : Smt. Kesang Y. Sherpa
Assessee by : Shri Sushant Phadnis

सुनवाई की तारीख / Date of Hearing : 26.08.2020
घोषणा की तारीख / Date of Pronouncement : 31.08.2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Revenue emanates from the order of the Ld. CIT(Appeal)-1, Kolhapur dated 17.03.2017 for the assessment year 2014-15 as per the following grounds of appeal on record:

- “1) Whether on the facts and in the circumstances of the case and in law, the learned CIT (Appeals) was justified in holding that the payment of rate difference of Rs. 43,73,21,677/- after the closure of the accounting year do not amount to distribution of profits, as the amount to be paid was not out of the profits ascertained at the Annual General Meeting ?
- 2) Whether on the facts and in the circumstances of the case and in law, the CIT (A) was justified in holding that the payment of Rs. 43,73,21,677/- on account of rate difference is out of commercial expediency, when there is no demand from milk suppliers ?
- 3) Whether on the facts and in the circumstances of the case and in law, the CIT (A) was justified in deleting the addition of Rs. 7,28,153/- made by the AO towards depreciation on fixed assets on project without deducting subsidy

received from the National Dairy Development Board, ignoring the provisions of section 43(1) and Explanation 10 to section 43(1) of the Act ?

4) The appellant prays that the order of the CIT (A) be vacated and that of the Assessing Officer be restored.

5) The appellant craves leave to add, alter, amend or modify any other grounds of appeal at the time of proceedings before the Hon'ble Tribunal which may please be granted."

2. At the very outset, Ld. AR submitted that the Revenue's grounds no.1 and 2 are inter-connected. The facts therein are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has made payment of Rs.43,73,21,677/- to the member of co-operative societies over and above regular purchase price milk paid to these milk societies who are the members of the assessee society under the guise of final rate difference. The Assessing Officer held that the said payment is nothing but distribution of profit amongst the members and therefore not deductible as expenditure. At the time of appellate proceedings, the assessee submitted that the issue is covered in its own decision by the Hon'ble Bombay High reported in 315 ITR 304. After considering the facts of the case and the assessee's submission on this issue, the CIT(A) held as follows :-

"6. I have considered the appellant's submission. I find that this ground is squarely covered by the decision of Hon'ble ITAT in the appellant's own case for A. Ys. 1996-97 to 1999-2000 and 2001-02 in ITA No. 401/PN/2005 to 405/PN/2005 dt. 26/09/2005 and also covered in the latest decision of Hon'ble Bombay High Court dt. 04/04/2009 in appellant's own case reported in 315 ITR 304. I also find that similar additions were deleted by the CIT(A), Kolhapur for A.Ys. 2005-06, 2006-07, 2012-13 and 2013-14. Respectfully following the above decision, the addition made on account of milk rate difference is deleted. In view of the above, the ground of appeal is allowed.

7. It is pertinent to note that while making the addition, the A. O. has only followed the assessment order of the earlier year without bringing any new facts on record. It is mentioned in the assessment order that she / he was not following the decision of Hon'ble Bombay High Court judgment (supra) on the ground that the decision of Hon'ble Bombay High Court (Supra) has not been accepted by the Department and SLP has been filed before Hon'ble Supreme Court, which is pending. In other words, the addition has been made simply to keep the issue alive."

3. At the time of hearing, Ld. AR vide written submissions filed before us submitted that the issue is squarely covered by the decision of the Hon'ble

Bombay High Court in assessee's own case reported in 315 ITR 304 wherein it was held as follows :-

“Coming to our case (as we have noted this is not the case of distribution of profits) as the amount to be paid was not out of the profits ascertained at the annual general meeting, it is not paid to all shareholders. The amount which is the subject-matter is paid to members who supply milk and in some case also to non-members. The payment is for the quantity of milk supplied and in terms of the quality supplied. The commercial expediency for payment of this price are the market conditions, and the need to procure more milk from the members and non-members to the assessee. To our mind, therefore, the amount paid by no stretch of imagination can be said to be dividend to the members or shareholders or payment in the form of bonus as bonus also has to be paid from the accrued profits.

In the light of our discussion, we are in agreement with the views taken by the Tribunal and the question at present has to be answered in the affirmative in favour of assessee and against the Revenue. Appeals dismissed.”

4. This was followed by the ITAT in assessee's own case vide ITA Nos.2726 & 2727/PUN/2016 for the assessment years 2012-13 & 2013-14 and it was held as follows :-

“The first issue which arises in the present appeal is squarely covered by the order of Hon'ble Bombay High Court in CIT Vs. (1) Solapur Dist. Co-op. Milk Producers and Process Union Ltd. (2) Kolhapur Zilla Sahakari Dudh Utpadak Sangh Ltd. (supra), which has been applied in assessment years 2007-08 and 2008-09. The year under appeal before us is assessment year 2012-13 and following the same parity of reasoning, we uphold the order of CIT(A) in this regard and dismiss the grounds of appeal No.1 and 2 raised by the Revenue.”

5. The Ld. AR further submitted that the Hon'ble Bombay High Court in assessee's own case in Appeal No.1156 and 1157 of 2014 has dismissed the Revenue's appeal stating that the *“question as framed does not give rise to any substantial question of law as the impugned order of the Tribunal has merely followed its own orders for the earlier Assessment Years, which have been accepted by the Revenue.”*

6. The Ld. DR fairly conceded that the issue is covered by the decision of the Hon'ble Jurisdictional High Court as well as the decision of Pune Bench of the Tribunal in favour of the assessee.

7. We have heard the rival contentions and considered the judicial pronouncements placed before us. We find that the facts as demonstrated on record the Revenue has accepted that the issue is covered in favour of the assessee. However, the addition was simply made since the Department has preferred an appeal before the Hon'ble Supreme Court vide SLP CC No.1694 of 2011 (Appeal Civil No.2008 of 2011). The Ld. CIT(A) also accepted this fact at para 7 of his order that the addition was simply made to keep the issue alive. The Ld. CIT(A) has placed reliance on the assessee's own case by the Hon'ble Jurisdictional High Court (supra) deciding the issue in favour of the assessee. We, therefore, uphold the decision of the Ld. CIT(A) more so for the fact that the Ld. DR was unable to place on record any decision of the Apex Court favouring the Revenue on this issue. Even the outcome of the appeal before the Hon'ble Supreme Court by the Revenue was not submitted before us. Therefore, on date, the issue is squarely covered in favour of the assessee. Grounds no.1 and 2 of the Revenue are dismissed.

8. Regarding the next ground which is in relation to the deletion of addition of Rs.7,28,153/- made by the Assessing Officer towards depreciation on fixed assets on project without deducting subsidy received from National Dairy Development Board (NDDB). The facts regarding this issue are that during the assessment proceedings, the Assessing Officer noticed that the assessee is in receipt of Project Subsidy of Rs.7,78,34,115/- from NDDB as per grant agreement to purchase of machinery and/or equipments. The assessment to the tune of Rs.33,18,20,381/- were transferred to Fixed Assets in F.Y. 1998-99 i.e. A.Y. 1999-2000. As per the provisions of section 43(1) of the Act, the depreciation should have been claimed after deducting Rs.7,78,34,115/- from the actual cost of the assets. However, the Assessing Officer found that the depreciation has been claimed without deducting the said amount received as

project grant from the NDDB. The Assessing Officer has mentioned in the order that the Department has not accepted the decision of the Hon'ble Bombay High Court which was in favour of the assessee and filed further appeal before the Hon'ble Supreme Court, which is pending for adjudication.

9. In appeal before the CIT(A), the assessee submitted that the issue is decided in its favour by the ITAT, Pune Bench in ITA No.401/PUN/2005 to ITA No.405/PUN/2005. It was further submitted that the Hon'ble Bombay High Court in assessee's own case in Appeal Nos.1156 to 1157 of 2014 has dismissed the Revenue's appeal on the above issue. The Ld. CIT(A) decided as follows :-

"11. I have considered the appellant's submission. I find that this ground is squarely covered by the decision of Hon'ble ITAT in the appellant's own case for A. Ys. 1999-00 and 2001-02 in ITA No. 404/PN/2005 & 405/PN/2005 dt. 26/09/2005. The ITAT in their decision has deleted the similar disallowance made out of depreciation on building & machinery. I also find that similar additions were deleted by the CIT(A), Kolhapur for A.Ys. 2005-06, 2006-07, 2012-13 and 2013-14. Respectfully following the above decisions, the addition made on account of disallowance of depreciation on building & machinery is deleted. In view of the above, the ground of appeal is allowed.

12. It is pertinent to note that while making the addition, the A.O. has only followed the assessment order of the earlier year without bringing any new facts on record. It is mentioned in the assessment order that the decision of Hon'ble High Court, Mumbai was not being followed as the Department had filed further appeal before the honourable Supreme Court, which is pending for adjudication. In other words, the addition has been made simply to keep the issue alive."

10. At the time of hearing before us, Ld. AR referring to decision of the Tribunal in assessee's own case in ITA Nos.2726 & 2727/PUN/2016 for the assessment years 2012-13 & 2013-14 submitted that the Tribunal has held on the issue as follows following the Hon'ble Bombay High Court's decision (supra) :-

"Similarly, the issue raised vide ground of appeal No.3 is squarely covered by the order of Hon'ble High Court in assessee's own case relating to assessment years 2007-08 and 2008-09, wherein the Hon'ble High Court has observed that the relief was given to assessee in earlier years, against which the Revenue had not filed any ground, though it had filed the appeal in respect of said orders of Tribunal. The Hon'ble High Court thus, dismissed the grounds of appeal raised by the Revenue in this regard. Applying the said ratio, we dismiss the ground of appeal No.3 raised by the Revenue."

11. We have considered the facts on record and the judicial pronouncements. We find the decision of the CIT(A) is well-based on the legal periphery of the decision of the Hon'ble Jurisdictional High Court favouring the assessee (supra). We, therefore, uphold the order of the CIT(A) and reject the ground of appeal of the Revenue. Ground no.3 is dismissed.

12. Grounds no.4 and 5 are general in nature hence no adjudication is required.

13. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 31st day of August, 2020.

Sd/-
(R. S. SYAL)
VICE PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st August, 2020

Sujeet

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.