

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "बी" PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

ITA No.507/PUN/2018

निर्धारण वर्ष / Assessment Year : 2015-16

Shri Datta Shetkari Sahakari Sakhar
Karkhana Limited,
A/P Datta Nagar, Tal. Shirol,
Kolhapur – 416120.

..... अपीलार्थी /
Appellant

PAN : AAAAS0597B.

बनाम v/s

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

..... प्रत्यर्थी /
Respondent

Assessee by : None.

Revenue by : Shri Mahadevan A.M. Krishnan.

सुनवाई की तारीख / Date of Hearing : 27.07.2021

घोषणा की तारीख / Date of Pronouncement : 27.07.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee Co-operative Society directed against the order of Commissioner of Income Tax (Appeals) – 2, Kolhapur dated 11.12.2017 for the assessment year 2015-16.

2. The brief facts of the case are as under :

The appellant is a Co-operative Society registered under the Maharashtra Co-operative Society Act, 1950. It is engaged into the business of manufacture and sale of sugar and its by-products. The return of income for A.Y. 2015-16 was filed on 27.09.2015. Against the said return of income, the assessment was completed by the Asst. Commissioner of Income Tax, Ichalkaranji Circle, Ichalkaranji (hereinafter called as "Assessing Officer") vide order dated 19.05.2017 passed under Sec.143(3) of the Act at a total income of Rs.1,77,83,490/-. While doing so, the Assessing Officer made an addition of Rs.4,86,83,556/- on account of sale of sugar at concessional rate to members of Co-operative Society.

3. Being aggrieved by the above addition, appellant society has filed an appeal before the Id.CIT(A) challenging the addition on account of sale of sugar at concessional rate to its members.

4. The Id.CIT(A) after referring to the decision of the Hon'ble Supreme Court in the case of CIT, Bombay Vs. Krishna Sahakari Sakhar Karkhana Ltd., reported in 211 taxmann.com 109 (SC) addressed the questions raised by the Hon'ble Supreme Court, set aside the issue to the file of Assessing Officer with the following directions :

"5.1.....

a) The AO will determine the quantity of sugar sold at concessional rate to members and restrict it to a maximum of 5 kgs per month per member / employee.

b) The sale price of this concessional sale is to be held at the levy price for the A.Y.

c) The difference between the concessional sale price actually charged from the members and the levy price for the limit of 5 kgs per month per member / employee is to be taxed in the hands of the appellant.

d) For the quantity of sugar sold beyond 5 kgs per month per member / employee at concessional rate, the difference between the market price and the concessional price has to be added as the income of the appellant.”

5. When the appeal was called on, none appeared on behalf of the assessee.

6. We heard the learned Sr.D.R. and after hearing the ld.Sr.D.R., we proceed to dispose of the same.

7. The issue in appeal relates to the addition on account of sale of sugar at concessional rate to its members. This issue requires to be adjudicated on the touchstone of law laid down by the Hon'ble Supreme Court in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Ltd. (supra). The ld.CIT(A) referring to the questions raised by the Hon'ble Supreme Court in the said case cited, has directed the Assessing Officer to compute the addition to income as per the directions mentioned at Para 5.1 of his order. The ld.CIT(A) has no power to set aside the issue to the file of Assessing Officer. However, the power of set aside can be exercised by the Tribunal. Therefore, we remit the grounds of appeals to the Assessing Officer to examine the allowability of the sale of sugar at concessional rate to its members on the touchstone of law laid down by the Hon'ble Supreme Court in the case of CIT Vs. Krishna Sahakari Sakhar Karkhana Ltd. (supra). Accordingly, the appeal of assessee is partly allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 27th day of July, 2021.

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 27th July, 2021.
Yamini

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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