IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA Nos. 72, 68 & 73/SRT/2020 (AYs 2012-13 & 2013-14)
(H*earing in Virtual Court)*

Shree Madhi Vibhag Sahakari Khand Udyog Mandi Ltd., At & P.O. Madhi, Tal.Bardoli, Dist. Surat-394 130 **PAN : AAAAS 4732J** The Deputy Commissioner of income Tax, Circle-2(3), Room No. 612, 6th Floor Aaykar Bhavan, Majura Gate, Surat-395001	Vs	Income Tax Officer, Ward-1, Bardoli, 2nd Floor, BSNL Building, Opp.Jalaram Temple, Station Road, Bardoli-394 601 Shree Madhi Vibhag Sahakari Khand Udyog Mandi Ltd., At & P.O. Madhi, Tal. Bardoli, Dist. Surat-394 130
Appellant		Respondent

Assessee by	Shri Mitish S.Modi,C.A
Revenue by	Shri H.P. Meena, – CIT-DR
Date of hearing	14.12.2021
Date of pronouncement	23.12.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This set of three appeals out of which one appeal by assessee in ITA No.73/SRT/2020 for assessment year 2013-14 and two cross-appeals for assessment year 2012-13 by assessee as well as by Revenue are directed against the common order of ld. Commissioner of Income tax (Appeals)-1, Surat dated 31.12.2019, which in turn arise out of separate assessment orders passed by the Assessing Officer (‘AO' for short) under

section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 11.03.2015 &29.02.2016 for AY 2012-13 & 2013-14 respectively. Both the parties have raised certain common grounds of appeal, further ld CIT(A) passed common order for both the assessment years therefore all appeals are clubbed heard and are decided by common order. For appreciation of facts, the facts for AY 2012-13 are treated as lead case. The assessee in its appeal in ITA No.72/SRT/2020 for assessment year 2012-13 has raised the following grounds of appeal:-

1	*On the facts and circumstances of the case as well in law, the order of the C.I.T.(Appeals)upholding the Assessing Officer's action making disallowance of Rs.1,47,21,71,832/- from total cane price paid to the sugarcane growers/farmers for the supply of sugarcane, without appreciating the past assessment/appeal "**records**" of the appellant co.op. society and purely on misleading, misconceptual, arbitrary and perverse observations and hence, being without jurisdiction, bad in law, in-valid, illegal, unwarranted of facts, is liable to be quashed.*	*61,86,90,640/-*
2	*On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously erred in holding that the portion of the cane price disallowable u/s 37(1) of the Act to the extent of Rs.1,47,21,71,832/- being the excess over FRP is inflated price amounting to diversion of profit, without appreciating the authentic, credible and cogent evidences/materials furnished demonstrating the fact of fixation of final/actual cane price with the approval of the State Government and hence, not*	*As per Sr. No. 1 above*

	justified.	
3	*On the facts and in the circumstances of the case as well in law, both the lower authorities have overlooked to see and appreciate that while computing profits of appellant society, the price to be allowed as a deduction for sugarcane supplied by farmers is the price fixed by its Board of Directors giving reasons for payment of competitive price, being approved/certified by the State Government authorities and hence, the action of the C.I.T.(Appeals) confirming the inferences of the AO to restrict the claim of sugarcane purchase price to the notified Statutory Minimum Price called FRP, which is a support price, is without jurisdiction, perverse, arbitrary, subjective, conjectural, illegal, invalid, bad in law and therefore, liable to be quashed.*	*As per Sr.No. 1 above*
4	*On the facts and circumstances of the case as well in law, the order of the C.I.T.(Appeals) ought to have held that the price of cane (**main raw material**) purchased by the appellant co.operative society from its members and other farmers (unregistered/nominal members) at the competitive price, was contractually fixed as permitted by Section 9 of the Sale of Goods Act, 1930 and hence, the AO's disallowance of portion of the cane price confirmed by the C.I.T.(Appeals) ignoring the fact of payment of cane price made for the year out of commercial expediency, being without jurisdiction, arbitrary or based on irrelevant or extraneous consideration, unfair, subjective, irrational, bad in law, invalid, void Authorities Below initio and therefore, liable to be struck down.*	*As per Sr. No. 1 above.*
5	*On the facts and circumstances of the case as well in law, both the lower authorities have erred in ignoring the fact that comparable cane prices paid by the other co-operative sugar societies in other States are in commensurate with the cane price fixed with the approval of the State Government for the year under appeal, were allowed as business expenditure u/s 37(1) of the Act in their assessments and therefore, the action of the tax authorities to deny the final/approved cane price in excess of FRP as the actual business expenditure incurred to meet the commercial expediency by the*	*As per Sr.No.1 above*

	*appellant co.operative society, being without jurisdiction, in pure contravention to the "**Rule of Consistency**", arbitrary, prejudicial, subjective, perverse, bad in law and hence, liable to be struck down.*	
6	*On the facts and circumstances of the case as well in law, the order of the C.I.T.(Appeals) failed to appreciate that the total cane price including the above amount of Rs.1,47,21,71,832/- was allowable both under section 28 and section 37 and the disallowance thereof results into Department taxing unreal and wrong amount of income.*	*As per Sr. No. 1 above.*
7	*On the facts and in the circumstances of the case as well in law, the C.I.T.(Appeals) failed to appreciate that on identical facts, in the past in all the assessment years, such price was allowed by various Assessing Officers or the Appellate Authorities, and therefore. There was no justification on the part of the Assessing Officer to decide to the contrary, and thus, offend the law laid down by the Supreme Court in CIT Vs. Excel Industries Ltd. - (2013) 358 ITR 295 holding that Revenue must be consistent and not flip-flop on the same issue in different assessment years.*	*As per Sr. No. 1 above.*
8	*On the facts and in the circumstances of the case as well in law, both the lower authorities have erred in overlooking and summarily rejecting the detailed various submissions made during the course of assessment/appeal proceedings including the Statutory Audit reports of the Govt. Auditors, the Statement of Accounts, audited Balance Sheet and Manufacturing reports, other relevant materials submitted to the State Government for approval of the final cane price, other State's approve cane price, opportunity cost/cost of cultivation to the farmers per supplying sugarcane to the appellant co.operative society as well as strong agitations by farmers demanding higher prices much more than FRP and hence, the order passed by the C.I.T.(Appeals) confirming the action of the AO making disallowance to the extent of Rs.1,47,21,71,832/- arbitrarily, capriciously and based on lopsided, imaginary and factually incorrect inferences, deserves to be annulled or nullified.*	*As per Sr. No. 1 above.*
	Total tax effect	*61,86,90,640/-*

2. The Revenue in its cross-appeal has raised the following grounds of appeal:-

1	*Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to recomputed the FRP taken by the AO was as per the order dated 22.10.2013 of the Ministry of Consumer Affairs, department of Food and Public Distribution, and despite the fact that the issue has been confirmed by Ld. CIT(A) on merits on the basis of findings of the AO.*	*1,78,30,879/-*
2	*(ii) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.72,539/- being interest income not recorded in books of account without appreciating the facts of the case.*	*Rs.22415/-*
3	*(iii) Whether on the facts and in the circumstances of the case and in Law, the Ld. CIT(A), Surat ought to have upheld the order of the Assessing Officer in respect of the issues raised in Ground No.(i) & (iii) above. It is, therefore, prayed that the order of the Ld. CIT(A)-1,Surat maybe set-aside and that of the Assessing Officer's order maybe restored.*	*N.A*
	Total tax effect (see note below)	*Rs.,1,78,53,294/-*

3. Brief facts of the case are that assessee is a co-operative society engaged in production of sugarcane and its bye-product. The assessee filed its return of income for the year under consideration 2012-13 declaring nil income. During the assessment, the Assessing Officer noted that assessee was making to sugarcane supplier / agriculturist over and above, Statutory Minimum Price ('SMP' in short) declared by Central Government for particular crashing season. The price pay to

the sugarcane growers is exempt from income tax being "agricultural income". The Assessing Officer was of the view that assessee made adjustment of price and paid over and above to the sugarcane growers with the ulterior motives with a view to diversion of income and not admissible for deduction under section 37 of the Act. The Assessing Officer accordingly made disallowance of Rs.147.21 crores being the amount paid over and above the SMP. On further appeal, before the Tribunal the order of Assessing Officer was confirmed. However, the Ld. CIT(A) directed the Assessing Officer to recomputed the Fair and Remunerative Price ('FRP' for short) on certain formula as per the order of Ministry of Consumer Affairs, Department of Food and Public Distribution. Further, aggrieved the assessee has filed appeal before this Tribunal. Similarly, the Revenue has also filed cross-appeal before us.

4. We have heard the submission of Ld. Authorized Representative (AR) for the assessee and Ld. CIT-Departmental Representative (DR) for the Revenue. The Ld. AR for the assessee submits that the grounds of appeal raised by assessee is covered by the decision of co-ordinate Bench of

this Tribunal in the case of Shree Khedut Sahakarai Khand Udyog Mandli Ltd. Vs. ITO for assessment year 2012-13 in **ITA No.1206/AHD/2017** reported viz; (2019) 108 taxmann.com 258 (Surat-Trib.) and in the case of *Shree Chalthan Vibhag Khand Udyog Sahkari Mandli Ltd. vs. Income Tax Officer, Ward-1, Bardoli* in ITA No.1205/AHD/2017 order dated 19.07.2019. Further the aforesaid order was followed in the case of Shree Ganesh Khand Udhyog Sahakari Mandli Ltd., vs. Income Tax Officer, order dated 29.09.2020. the Ld. AR for the assessee submits that Tribunal while restoring matter back to the file of assessing officer followed the order of Hon'ble Supreme Court in CIT Vs Tasgaon Taluka SSK Ltd (2019) 103 taxmann.com 57/ (412 ITR 240 SC)

5. On the other hand, Ld. Commissioner of Income-tax-Departmental Representative (DR) for the Revenue submits that he supports the order of Assessing Officer and considering the decision of Hon'ble Supreme Court (supra) the matter may be restored to the file of Assessing Officer to pass the order afresh in accordance with law.

6. We have considered the submissions of both the parties and have gone through the orders of the lower authorities. We find that the assessing officer while passing the assessment order made addition of Rs. 147.22 Crore on account of excess payment for sugar cane over and above SMP/FRP. On appeal the Ld. CIT(A) directed the assessing officer to recompute the FRP on certain formula as per the order dated 22.12.2013 of Ministry of Consumer affair, Department of Food and Public Administration. Further aggrieved both the parties have filed their respective appeal by raising the grounds of appeal as noted above. We find that on identical issue and on similar set of fact, the co-ordinate Bench of this Tribunal by considering the decision of Hon'ble Supreme Court in the case of *CIT vs. Tasgaon Taluka S.S.K. Ltd.,* (2019) 103 taxmann.com 57/262 Taxman 176/412 ITR 420 (SC) in Shree Khedut Sahakarai Khand Udyog Mandli Ltd. Vs. ITO (supra) passed the following order;

> 8.We have heard both the sides and gone through the relevant material on record. It is an agreed position 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 has recorded the factual matrix that the assessee in that case purchased and crushed sugarcane and paid price for the purchase during crushing seasons, 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, 1966authorizes 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. The Hon`ble Supreme Court 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."

9. Both the sides are unanimously agreeable that the extent issue of deduction for payment of excessive price for purchase of sugarcane 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 AO for deciding it afresh as per law in consonance with the articulation of law by the Hon'ble Supreme Court in the afore noted 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, that the assessee will be allowed a reasonable opportunity of hearing by the AO in such fresh determination of the issue. It is further made clear that the assessee will be at liberty to raise any other argument concerning the issue before the AO."

7. Considering the decision of Hon'ble Supreme Court the co-ordinate Bench of this Tribunal and the fact that both the parties have agreed to restore the matter to the file of Assessing Officer to pass the order by following the decision of Hon'ble Supreme Court in the case of Tasgaon Taluka S.S.SK. Ltd. (supra) and other relevant orders of assessees engaged in similar business. The grounds of appeal raised by assessee are restored back to the file of Assessing Officer to decide the issue afresh in accordance with law to follow the decision of co-ordinate Bench of this Tribunal in the case of Shree Khedut Sahakarai Khand Udyog Mandli Ltd. vs. Income Tax Officer, (supra). Needless to say that before passing the order afresh,

the Assessing Officer shall grant fair and reasonable opportunities of hearing to the assessee and the assessee will also at liberty to raise other submission related to the issue before the Assessing Officer and when called for. In the result, appeal of assessee is allowed for statistical purposes in above terms.

8. Considering the fact that we have restored the assessee's main issue to the file of Assessing Officer for afresh adjudication, therefore, the grounds of appeal raised by Revenue in its cross-appeal in **ITA No.68/SRT/2020** have become infructuous and dismissed as such. In the result, Revenue's appeal is dismissed as infructuous.

ITA No.73/SRT/2020 A.Y. 2013-14 by assessee

9. As noted above, the assessee has raised appeal in identical grounds of appeal except variation of figure which we have restored back to the file of Assessing Officer for the year under consideration, considering the fact that we have already restored the similar grounds of appeal in assessee's appeal ITA No.72/SRT/2020 for assessment year 2012-13, therefore this appeal is also restored to the file of Assessing Officer with

similar direction. This appeal of assessee's appeal is allowed for statistical purposes in above terms.

10. In the result, appeals of assessee in ITA No. 72 & 73/SRT/2020 are allowed for statistical purposes and Revenue's cross-appeal ITA No.68/SRT/202 is dismissed as infructuous. A copy of the instant common order be placed in the respective case file(s).

Order pronounced in open Court on 23/12/2021 in open court and result was also placed t on the notice board.

Sd/-	Sd/-
(Dr ARJUN LAL SAINI)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Surat, Dated: 23/12/2021
Dkp. Sr.P.S. O.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-2, Surat
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Assistant Registrar, ITAT, Surat