

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.1564/PUN/2018

निर्धारण वर्ष / Assessment Year : 2015-16

Shree Chhatrapati Sahakari Sakhar Karkhana Ltd., A/P. Bhavaninagar, Tal. Indapur, Dist. Pune – 413104 PAN : AAAAS3869G	Vs.	DCIT, Circle-14, Pune
Appellant		Respondent

Assessee by None
Revenue by Shri S.P. Walimbe

Date of hearing 13-01-2022
Date of pronouncement 13-01-2022

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order dated 06-06-2018 passed by the CIT(A)-7, Pune in relation to the assessment year 2015-16.

2. The only issue raised in this appeal is against the confirmation of disallowance of Rs.2,54,86,052/- made on account of sale of sugar at concessional rate.

3. Succinctly, the facts of the case are that the assessee is engaged in the business of manufacture of sugar and its by-

products. It is a Co-operative Society having large number of farmers as its members. Most of them cultivate sugarcane and supply the same to the assessee society. A return was filed declaring loss of Rs.39.42 crore. During the course of assessment proceedings, the AO observed that the assessee sold sugar at concessional rate to its members. Such concession amounting to Rs.2,54,86,052/- was added by the AO to the total income. No relief was allowed by the Id. CIT(A). Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. We have heard the Id. DR through Virtual Court and perused the relevant material on record. The appeal was posted for hearing on 11-01-2022 when the assessee remained absent. The matter was adjourned for 13-01-2022 and again the assessee remained absent. We are, therefore, disposing of the appeal *ex parte qua* the assessee on merits.

5. It is observed that the issue of sale of sugar at concessional rate and the consequential making of addition has been considered by the Hon'ble Supreme Court in the case of *CIT Vs. Krishna Sahakari Sakhar Karkhana Limited (2012) 27 taxmann.com 162* (SC). Vide judgment dated 25-09-2012, the Hon'ble Supreme

Court noticed that the difference between the average price of sugar sold in the market and the price of sugar sold by the assessee to its members at concessional rate was taxed by the Department under the head “Appropriation of profit”. The Hon’ble Summit Court remitted the matter to the CIT(A) for considering, *inter alia*,: “whether the abovementioned practice of selling sugar at concessional rate has become the practice or custom in the Co-operative sugar industry?; and whether any Resolution has been passed by the State Government supporting the practice?; The CIT(A) would also consider on what basis the quantity of the final product, i.e. sugar, is being fixed for sale to farmers/cane growers/Members each year on month-to-month basis, apart from others from Diwali?” The issue under consideration can be decided by an appropriate lower authority only on the touchstone of the relevant factors noted in the above judgment. In our considered opinion, it would be just and fair if the impugned order on this score is set aside and the matter is restored to the file of the AO for fresh consideration as to whether the difference between the average price of sugar sold in the market and that sold to members at concessional rate is appropriation of profit or not, in

the light of the directions given by the Hon'ble Supreme Court in the case of *Krishna Sahakari Sakhar Karkhana Limited (supra)*.

We order accordingly. Needless to say, the assessee will be allowed proper opportunity of hearing by the AO,

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 13th January, 2022.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 13th January, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-7, Pune
4. The Pr.CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A',
ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	13-01-2022	Sr.PS
2.	Draft placed before author	13-01-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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