

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

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER AND
DR.DIPAK P.RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.02/PUN/2020
निर्धारण वर्ष / Assessment Year: 2016-17

The Deputy Commissioner of Income Tax, Circle-1, Kolhapur.	Vs	Kolhapur Zilla Sahakari Dudh Utpadak Sangh Ltd., B-1, M.I.D.C Gokul Shirgaon, Kolhapur – 416113. PAN: AAAAK 0230 D
Appellant/ Assessee		Respondent /Revenue

Assessee by	None.
Revenue by	Shri Anurag Shivastava – DR
Date of hearing	10/06/2022
Date of pronouncement	15/06/2022

आदेश / ORDER

PER S.S.Godara, JM:

This Revenue's appeal for A.Y. 2016-17 is directed against the Id.Commissioner of Income Tax(Appeals)-1, Kolhapur's order, dated 22.10.2019 passed in case no.KOP/10439/2018-19 involving proceedings u/s 143(3) of the Income Tax Act, 1961 in short "the Act".

Case called twice. None appear at the assessee's behest. It is accordingly proceeded ex-parte.

2. The Revenue pleads the following substantive grounds in the instant appeal:

"1. On the facts and circumstances of the case and in law, the CIT(A) was not justified in deleting the addition made on account of distribution of profit in the garb of payment of additional price for purchase of milk, without

taking note and direction of the Hon'ble Supreme Court of India in judgment dated 23.08.2011 on similar issue in Civil appeal no. 7227 of 2011 in the case of CIT-1, Kolhapur vs Shri Warana Sahakari Dudh Utpadak Prakriya Sangh.

2. *On the facts and circumstances of the case and in law, the CIT(A) was not justified in not appreciating the fact that additional purchase price was paid only to the members of the society after determination of profit earned by the assessee society at the end of the financial year, which amounts to distribution of profits in terms of bye-laws of the assessee society.*

3. *The appellant prays that the order of the Ld. CIT(A) be vacated and that of the Assessing Officer's order be restored.*

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

3. We next note that the CIT(A) detailed discussion granting the impugned relief to the assessee reads as under:

"4. Before me, Shri Pranjal Phadnis, Advocate & AR appeared and the case was heard and discussed. In respect of ground no. 1 the AR stated that this issue is squarely covered in favour of the assessee by the decision of Hon'ble ITAT in his case for AYs 1996-97 to 199-2000 and 2001-02 in ITA Nos. 401 to 405/PN/2005 dated 26/09/2005 and also by the decision of the Hon'ble Bombay High Court in assessee's own case in 315 ITR 304. In respect of ground 2 also, the AR submitted that the matter is covered in his favour by the decision of the Hon'ble ITAT cited above as well as the decision of the Hon'ble Bombay High Court in the assessee's own case in appeal (no. 1156 and 1157 of 2014 where the Departmental appeal has been dismissed.

5. *I have carefully considered the matter and I find that the disallowance of the final rate difference is squarely covered in the case of the appellant by the decision cited as well as the issue in ground 2 of disallowance of depreciation after reducing the project subsidy is also covered in favour of*

the appellant by the orders of the ITAT and Hon'ble Bombay High Court. Respectfully following the decisions of the ITAT and Hon'ble Bombay High Court in the case of the assessee in earlier years, the disallowances of Rs.63,92,45,825 and Rs 6,39,575 are deleted and grounds 1 and 2 are allowed."

4. Learned Departmental Representative vehemently contended during the course of hearing that the Id.CIT(A) has nowhere considered the hon'ble apex court's landmark decision in CIT-1 vs. Shri Warana Sahakari Dudh Utpadak Prakriya Sangh (supra) whilst accepting the assessee's sole substantive ground in issue. He fails to dispute the clinching fact that the hon'ble jurisdictional high court decision come much after in 2014 (supra) has already settled the law regarding the assessee's payment of final milk rate difference against the department. That being the case, we conclude that the CIT(A)'s findings in issue deserve to be upheld. Ordered accordingly.

6. This Revenue's appeal is dismissed.

Order pronounced in the open Court on 15th June, 2022.

Sd/-
(DIPAK P.RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(S S GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 15th June, 2022/ SGR*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) concerned.
4. The Pr. CIT concerned.
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
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.