

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.2113/PUN/2019
निर्धारण वर्ष / Assessment Year: 2016-17

Bhima Sahakari Sakhar Karkhana Ltd., A/p. Takli Sikandar, Tal. Mohol, Dist. Solapur – 413248 PAN: AAAAB 0872 C	Vs	The Income Tax Officer, Ward-2(1), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Hanmant Dattatry Dhavle - AR
Revenue by	Shri S P Walimbe – DR
Date of hearing	10/06/2022
Date of pronouncement	20/06/2022

आदेश / ORDER

Per S.S.Godara, JM:

This assessee's appeal for A.Y.2016-17 is directed against the Commissioner of Income Tax(Appeals)-7, Pune's order, dated 25.10.2019 passed in case no.PN/CIT(A)-7/Wd-2(1)10308/2018-19 involving proceedings u/s 143(3) of the Income Tax Act, 1961 in short "the Act".

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance raised in the instant appeal that both the lower authorities have erred in law and on facts in disallowing/adding back the amount in dispute of Rs.92,66,829/- on account of sugar sold at concessional rates to its members, we note

that the CIT(A) detailed discussion affirming the Assessing Officer's action to this effect reads as under:

"5.3.1 One of the claims of the appellant is that the concessional sale of sugar cannot be charged as appropriation of profits and thus be treated as income. It is also claimed that there is no provision under the Income Tax Act to charge the concessional sale as income. There is no merit in this claim of the appellant. The profits and gains of the appellant has to be computed in accordance with the accounting practices and the charging section 28 clearly specifies that the profits and gains of any business or profession carried on by the assessee at any time during the previous year shall be chargeable to Income Tax. The income chargeable under the head 'Profits & Gains' of the business shall be computed in accordance with the system of the accounting regularly employed by the assessee as per section 145 of the Income Tax Act. The AO therefore derives the power to bring to tax all the amounts which have not been accounted in view of the above provisions. The concession amount is nothing but an income which is not accounted for and therefore the AO has correctly brought it to tax. The CBDT Circular relied by the appellant pertains only to the Consumer Societies and therefore is not relevant to the appellant's case.

5.3.2 The second argument of the appellant is that there is no levy sale during the year and therefore selling the sugar to members at levy price plus excise duty is not implementable which is the mandate as per Circular No. 5 dated 01.03.2006 issued by the Commissioner of Sugar. The appellant alternatively claimed that the sugar sold to the members is at a price higher than the Central Government directed PDS price and therefore no addition ought to be made in his case. The government used to purchase sugar at levy price from the factories for selling the same through PDS and subsequent to the deregulation of the sugar sector from 01.04.2013, the government is purchasing the sugar from open markets AND THE Central Government is reimbursing a fixed subsidy @18.50 per Kg. limited to the quantity based on the existing allocation to the States and the retail price under the PDS was fixed at Rs.13.50 per Kg. and the additional cost to be absorbed by the States. Since the Government is purchasing at market price for the purpose of distributing it through PDS, it is logical to expect that the companies realize the market price from the members on the sale of sugar to them. It is seen that the AO has adopted a price apparently issued by the sugar commissioner for charging the members for working out the concession given. There is no levy price. The AO is directed to re-work the concession by adopting the price charged to the members. In result the ground of the appeal is enhanced."

3. We have given our thoughtful consideration to vehement rival consideration against and in support of the impugned disallowance and notice that the instant issue is no more res-integra as this tribunal's latest

co-ordinate bench's order in ITA No.69/PUN/2020, Vishwasrao Naik Sahakari Sakhar Karkhana Ltd., vs. ACIT, dated 06.06.2022 has restored the same back to the Assessing Officer as under:

"3. Both the learned Representatives reiterated their respective stands during the course of hearing. We proceed in this factual backdrop that the assessee's sole substantive grievance canvassed in the instant appeal seeks to reverse both the learned lower authorities disallowing / adding sale of sugar amounting to Rs.1,70,69,654/- made to its members at concessional rates. This tribunal's latest co-ordinate bench's order Sant Tukaram Sahakari Sakhar Karkhana Ltd vs. ITO in ITA Nos.2045 & 2046/PUN/2019 dated 01.06.2022 has restored the similar issue back to the Assessing Officer as follows:

"7. We have heard the rival contentions and perused the relevant material on record. 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."

4. We adopt the forgoing detailed reasoning mutatis-mutinis and direct the Assessing Officer to decide the instant issue afresh in preceding terms. Ordered accordingly.

5. This assessee's appeal allowed for statistical purpose in above terms.

Order pronounced in the open Court on 20th June, 2022.

Sd/-
(DIPAK P.RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(S S GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th 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
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.