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

BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM

आयकर अपील सं. / ITA No.3035 to 3038/PUN/2017
निर्धारण वर्ष / Assessment Year : 1998-99 to 2001-02

Shree Adinath SSK Ltd.,
Shelgaon-Bhalwani,
Jeur, Tal. Karmala
Dist -Solapur – 413 202.

PAN : AAAAS4167M .....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle -1, Solapur .....प्रत्यर्थी / Respondent

Assessee by : Shri Prasanna L. Joshi
Revenue by : Shri Anurag Shivastava

सुनवाई की तारीख / Date of Hearing : 06.06.2022
घोषणा की तारीख / Date of Pronouncement : 15.06.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. These assessee's four appeals for Assessment years 1998-1999 to 2001-02 arise against the CIT(A)-6 Pune's common order dated 30.06.2017 passed in case No. PN/CIT(A)-V/(set aside by the SC)/152 to 156/2010-11; respectively, in proceedings u/s. 143(3) of the Income Tax Act, 1961 ; in short "the Act".

Heard both the parties. Case files perused.

2. The assessee's first of all presses for its identical fourth to eight substantive grounds in A.Y. 1998-99's appeal ITA No.3035/PUN/17 as follows :-

> *"4. Without prejudice to the above, the Ld. CIT(A) factually erred in confirming the wrong quantum of disallowance made by the AO of Rs 171.50/Mt for 3,68,930 when the cane was purchased at different prices as noted by AO himself at page 2 of his order.*
>
> *5. Without prejudice to the above, the CIT(A) did not even allow deduction under clause 5A which the CIT(A)-V had accepted in Shree Dnyaneshwar pursuant to directions of the Hon'ble Supreme Court in 326 ITR 42 to compute income on "real income" basis.*
>
> *6. Ld. CIT(A) has relied upon report of a Committee headed by one Mr. Godbole whose report was neither made available to the appellant nor was Mr. Godoble made available for cross examination and the said report which was rejected by the State Govt. cannot be a basis for confirming the disallowance.*
>
> *7. Ld. CIT(A) erred in ignoring the judgement of Hon'ble Supreme Court in 1995 Suppl 3 SCC 475 wherein it was held that what was paid by co-operative sugar factories in Maharashtra to farmers was "price" for their cane and the Court had upheld the cane price fixation orders of the Commissioner of Sugar.*
>
> *8. Ld. CIT(A) erred in ignoring the fact that the same AO had allowed comparable cane prices paid by private sector sugar mills as deductions in their assessments but disallowed similar payments made by co-operative sugar factories."*

3. Learned counsel next stated at the par the assessee's identical 4th to 7th (A.Y. 1999 -2000 and 2001-02) and 4th to 8th substantive grounds in third assessment year 2000-01 involving ITA Nos. 3036 to 3038/PUN/2017; respectively, also raise the very issue of deduction claim regarding excess sugarcane price paid to its members.

4. We note with the able assistance from both the sides that the instant issue of excess sugarcane price paid to members is no more res integra as this tribunal's co-ordinate bench's common order in twelve appeals ITA 308/pun/18 and Majalgaon Sahakari Sakhar Karkhana Ltd. v/s ACIT and 11 other such assessee's, dated 14.03.2019 has restored the same back to the Assessing Officer as under.

> *"5. We have heard both the sides and gone through the relevant material on record. There is consensus ad idem 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 recorded the factual matrix that the assessee in that case purchased and crushed sugarcane and paid price for the purchase during crushing seasons 1996-97 and 1997-98, 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, 1966 authorizes 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. He 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."

6. Both the sides are unanimously agreeable that the extant issue of deduction for payment of excessive price for purchase of sugarcane, raised in most of the appeals under consideration, 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 respective A.Os. for deciding it afresh as per law in consonance with the articulation of law by the Hon'ble Supreme Court in the aforenoted 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, the assessee will be allowed a reasonable opportunity of hearing by the AO in such fresh determination of the issue."

5. Mr. Joshi sought to highlight the fact hon'ble apex court had restored the instant issue in its own case to the CIT(A) with specific remand directions. He fails to dispute the lordships subsequent decision on the very issue in Tasgaon Taluka SSK Ltd. (supra) had adopted the same course of action is now pending before the Assessing Officer in above terms. We thus adopt the foregoing reasoning to restore the instant sugarcane pricing issue to the learned assessing authority in same terms. Ordered accordingly. The Assessee's sole substantive grievance pressed in A.Y.1998-99' as well as the corresponding main appeal ITA 3035/PN/2017 are accepted for statistical purposes.

6. Learned counsel next submitted that the assessee's identical latter substantive ground in ITA No.3036 to 3038/PUN/2017 seeks to claim section 80 IA deduction. He could hardly dispute the fact that hon'ble jurisdictional high court's recent decision in EBR Enterprises V/s. Union Of India (2019) 107 taxmann.com 220 (Bombay) takes note of section 80A (5) r.w.s. 80AC to hold that the taxpayer concerned must file his section 139(1) return making the corresponding claim of deduction which forms a mandatory condition. Learned counsel at this stage sought to highlight the fact that the once the assessee had derived losses, it could not have claimed the impugned deduction and therefore, he quotes (2010) 124 ITD 156 (Chennai) (SB) dealing with a similar claim of section 80HHC deduction thereby deciding the issue against the department.

7. We find no force in assessee's foregoing arguments once hon'ble jurisdictional high court has adjudicated the issue in Revenue's favour. The assessee fails in instant identical latter substantive ground in assessment years 1999–2000 to 2001-2002's appeals ITA Nos. 3036 to 3038/PUN/2017 therefore.

No other argument or ground has been pressed before us.

8. To sum up, the assessee's first and foremost appeal ITA No. 3035/PUN/2017 is allowed for statistical purposes and it's latter three appeals ITA No. 3036 to 3038/PUN/2017 are partly allowed for statistical purposes in above terms. A copy of this common order be placed in respective case files. Ordered accordingly.

Order pronounced in the Open Court on this 15th day of June, 2022.

Sd/-	**Sd/-**
(DR.DIPAK P.RIPOTE)	**(S.S. GODARA)**
लेखा सदस्य/ ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 15th June, 2022.
Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-6, Pune.
4. The Pr.CIT-6, Pune.
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.

S.No.	Details	Date	Initials
1	Draft dictated on	06.06.2022	
2	Draft placed before author	14.06.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		