

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

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

आयकर अपील सं. / ITA No.1958/PUN/2018
निर्धारण वर्ष / Assessment Year : 2015-16

Shree Someshwar SSK Ltd.,
Someshwarnagar, Tal.-Baramati,
Distt.-Pune-412306

PAN : AAAAS2034B

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Circle – 14, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prasanna L. Joshi
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 08-07-2022
घोषणा की तारीख / Date of Pronouncement : 11-07-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 05-09-2018 passed by the Commissioner of Income Tax (Appeals)-7, Pune [‘CIT(A)’] for assessment year 2015-16.

2. The sole ground raised by the assessee challenging the action of CIT(A) in confirming the addition made by the AO of Rs.1,80,02,205/- on account of concession given to members.

3. Heard both the parties and perused the material available on record. We note that the assessee is a co-operative society engaged in the business of manufacture of sugar, ethyl alcohol and generation of electricity. The ld. AR, Shri Prasanna L. Joshi and ld. DR, Shri S.P. Walimbe submitted that the issue raised in present appeal has already been considered and adjudicated by the Co-ordinate Bench of Tribunal in batch of appeals vide order dated 14-03-2019 out of which the lead case being Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT in ITA No. 308/PUN/2018 for the assessment year 2013-14 and has held as under :

“11. Having heard both the sides and gone through the relevant material on record, it is observed that the AO made addition of the difference between the market price and the concessional price at which sugar (final product) was given to farmers and cane growers. In this regard, it is observed that this issue 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 orders on this score are set aside and the matter is restored to the file of AOs, instead of to the CITs(A), 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). Restoration to the AO is necessitated because, following the judgment of the Hon’ble Apex Court in the case of Tasgaon Taluka S.S.K. Ltd. (supra), we have remitted the issue of payment of excessive price to the file of AO, and as such, the instant issue cannot be sent to ld. CIT(A) as it would amount to simultaneously sending one part of the same assessment order to the AO and other to the CIT(A), which is not appropriate. We order accordingly.”

4. In the light of above, we find that the issue raised in present appeal is identical to the one already decided by the Co-ordinate Bench. Thus, in

view of the above order by Co-ordinate Bench this issue is restored back to the file of Assessing Officer for de-novo adjudication in similar terms. The Assessing Officer shall grant reasonable opportunity of hearing to the assessee, in accordance with law.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 11th July, 2022.

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

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 11th July, 2022.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order 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, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune