

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE

**SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

ITA No. 1880/PUN/2018 : A.Y. 2014-15

Ashok SSK Ltd.,
Ashok Nagar,
Shrirampur,
Ahmednagar 413 717
PAN: AACAA 2410 P

Appellant

Vs.

The Asstt. Commissioner of Income-tax,
Ahmednagar Circle, Ahmednagar.

Respondent

Appellant by : Shri Prakash Sandbhor

Respondent by : Shri Arvind Desai

Date of Hearing : 10-08-2022

Date of Pronouncement : 16-08-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

This appeal preferred by the assessee emanates from order of the Id. Commissioner of Income Tax (Appeals)-2, Pune, dated 12-07-2018 for the Assessment Year 2014-15 as per the grounds of appeal on record.

2. There is a delay of 33 days in filing of this appeal. The assessee has filed an affidavit seeking condonation in filing this appeal on the ground that the regular Chief Accountant of the assessee was not attending the office due to ill-health of his brother who subsequently passed away on 26-11-2018. In the circumstances therefore, we condone the delay in filing this appeal considering the attending circumstances as mentioned in the affidavit filed by the assessee as the same was not deliberate and intentional.

3. The only issue for adjudication is with regard to the sale of sugar at concessional rate. Similar issue has come up for consideration before co-ordinate Bench of Pune Tribunal in the case of Shree Adinath SSK Ltd. Vs.

ACIT in ITA No. 485/PUN/2019 for A.Y. 2013-14, order dated 11-05-2022, wherein it has been observed and held as under:

“Ground Nos.15 to 18 pertains to “Sale of Sugar at Concessional rate to members”

6. *On this issue, the Co-ordinate Bench of the Tribunal in the case of ACIT Vs. Shri Shankar SSK Ltd. (supra.) has held and observed as follows:*

“B. Defective manner of giving effect to the directions of the Hon’ble Apex Court in the case of CIT vs. Krishna SSK, (2012) 211 taxmann.com 109 (SC)

9. Taxability of sale of sugar at concessional rates to the members/shareholders. The facts relevant to this issue are that the assessee is engaged in the business of purchase of sugarcane, manufacturing of sugar in their mills and are selling sugar to the members and non-members. All these SSK sell sugar at concessional price to the farmers, who are the members of Sahakari Sakhar Karkhana (SSK). These members supply sugarcane to the SSK manufactures. The concessional rate of sugar is lower than the price set by the Government (levy sugar). The said concession i.e. the differences between the levy price set by the Government and the sale price to members, was deemed by the Assessing Officer in the scrutiny assessments as income of the assessee. This issue eventually travelled to the Hon’ble Supreme Court in the case of Krishna SSK Ltd. (supra). After due consideration, the Hon’ble Supreme Court gave certain directions to the Income Tax Authorities and remanded the matter to the file of the CIT(A) for complying with the said directions before taxing any such concessional sugar price to the farmers. The details of these directions are discussed in the succeeding paragraphs of this order.

10. In all these bunch of appals, respective CIT(A) passed their orders after considering the said judgment by the Apex Court. However, while giving effect to the said directions, the CIT(A) failed to comply with the directions strictly. For example, the direction relating to income nature of the said concession in sale price and includibility of the concessional sugar price in the total income of the assessee stands unattended by the CIT(A) while passing the order. The adjudication on this crucial direction is essential. In the absence of the decision of the lower authorities on these crucial issues, it is not possible for the Tribunal to adjudicate the issues under consideration raised by the appellants/department. In the above background, both, the counsels for the assessee and the Revenue fairly submitted that there is requirement of clear finding of fact and law on the directions by the Hon’ble Supreme Court of India. Thus, the includibility of such concessional sugar price in the total income of the assessee assumes great significance and the same is conspicuously missing in the impugned orders of the respective CIT(A).

11. In the light of above, the Id. AR for the assessee furnished following written submissions raising the issues for consideration of the CIT(A) in respective cases :-

“1. Hon’ble ITAT, Pune, in Chh. Shahu SSK ITA No. 1924-26/PN/90 vide order dated 8/8/1996, at paras 32-39, following ratio of A. Raman & CO, 67 ITR 11 (SC), held that no income accrued to the assessee on sale of sugar at concession rate to its members.

2. Hon’ble Bombay High Court, in CIT v. Terna SSSK, 301 ITR 222, has noted that Counsel for the Dept, in view of Circular No. 117 dt. 22/8/1973 did not press this ground in appeal.

3. Hon’ble Supreme Court, in CIT v. Krishna SSK, (2012) 211 Taxman 109 (SC), has not referred to Dept, not pressing this issue in High Court. Hon’ble Supreme Court has given following directions to the CIT(A) to decide the issue:

a) Whether the difference between market price and the concessional price of sugar sold to members / farmers / cane growers, **should or should not be added to total income of the assessee society?**

b) The CIT(A) will take into account whether the practice of selling sugar at concessional rate to its members / farmers / cane growers, has become **a practice or custom in co-operative sugar industry?**

c) Whether any resolution has been passed by State Govt. supporting the practice?

d) CIT(A) will also consider on what basis the quantity of sugar is sold on month to month basis, apart from Diwali.

4. After above judgement of Hon’ble Supreme Court was pronounced, in various appeals decided by different CIT(A)s, they have taken differing approaches, wherein:

a) CIT(A)s have not decided the issue that was directed by the Hon’ble Supreme Court as to “whether difference between market price and concessional price of sugar sold should or should not be added to total income of the assessee society”. (emphasis ours) This issue revolves round whether the income sought to be assessed in the hands of the assessee society had at all accrued to it. In of the some of the submissions to CIT(A), this issue was specifically raised and ratio of Hon’ble Supreme Court’s judgement in A. Raman &CO, 67 ITR 11 (SC) was relied upon. However, the CIT(A)s have not dealt with the same. It has been submitted to the Hon’ble ITAT that assessee society has not made secret profits nor has received this difference in price back from the members and as such fictional income which is not received by the assessee cannot be taxed in its hands as held by Hon’ble Supreme Court in CIT v. Calcutta Discount Co. Ltd, 91 ITR 8 (SC).

b) In some appeals before CIT(A), assessee has relied upon the CBDT Circular No. 117 for the proposition that rebate given by Co-op. Society to its members’ was not disallowable in Society’s hands and therefore the discount given to members in the price of sugar should not be taxed in the hands of the Co-op. Society. In some appeals the CIT(A), after noting the directions in Krishna SSK, has held that relying on the Circular,

the said concession given by assessee is not taxable in its hands.

c) In most of the appeals, CIT(A)s have held that supplying sugar at a concession price to members and cane suppliers has become a trade practice and custom of the industry. CIT(A)s have noted that State Govt. has now brought strict uniformity in this practice by issuing an order dt. 1/3/2006 u/s 79A of MCS Act, stating the eligibility for society to sell such sugar, its price and monthly quantum.

d) Most CIT(A)s, having noted the aforesaid order dt. 1/3/2006, held that sugar sold at prices lower than levy sugar as provided of in the said order, would be taxable in assessee's hands at the difference between levy price and concessional price charged for infringement of the order.

e) Some CIT(A)s held that concession sugar sold in excess of quantum permitted by order dt. 1/3/2006, would be taxable in the hands of the assessee society for infringement of the order.

f) Some CIT(A)s held that concession sugar sold to cane growers who were not members was not permitted by order dt. 1/3/2006 and as such was its infringement and therefore, the concession given was taxable in the hands of the assessee society.

g) Some assessee societies have not sold concessional sugar every month but only during Diwali or Gudi Padwa. If such sales were less than 5 kgs per month for the year, CIT(A)s have accepted them to be within the quantum of the order dt. 1/3/2006.

h) Most CIT(A)s have not considered the submission that the Hon'ble Supreme Court in Krishna SSK, had specifically excluded the quantum sold during Diwali and therefore the Diwali sales of sugar at concession to members / cane growers were found acceptable by the Hon'ble Court.

5. It is in the above back ground that the concession given in sugar sold by assessee societies to members or cane growers is required to be adjudicated. On perusal of assessment orders and appellate orders of the CIT(A)s it is seen that the very first issue to be decided, i.e. whether difference between market price and concessional price of sugar sold should or should not be added to total income of the assessee society has not been adjudicated by the lower authorities. This issue goes to the root of the matter and it is necessary for the revenue authorities to consider the same, record their findings and reasons for their decision.

6. In the event revenue authorities hold that the difference between market price and concessional price of sugar is not at all to be taxed in the hands of the assessee society, then the matter stands concluded and no further findings are required.

7. If however, revenue authorities hold that it is the difference between levy price of sugar plus excise duty (as directed in

order dt. 1/3/2006) and the price charged to members / cane suppliers which is to be taxed in the hands of assessee society, they may record their findings and reasons for their decision considering assessee societies contentions that they have not received this difference and hence it is not their income.

8. In the event of aforesaid difference (in 6 or in 7 above) is taxed as income in the hands of the assessee society, the quantity of sugar sold to members / cane growers which is being taxed be specified by the revenue authorities with their findings and reasons for the same. In arriving at the above findings and reasons, as directed by the Hon'ble Supreme Court in Krishna SSK, the authorities would be required to consider:

- (a) impact of custom and trade practice;*
- (b) the State's policy;*
- (c) basis for monthly sales; and*
- (d) sales during Diwali"*

12. In the light of the above, it is the submissions of AR for the assessee and the Id. DR that all these bunch of appeals need to be remanded to the file of Assessing Officer for fresh adjudication for the purpose of giving effect to the directions of Hon'ble Apex Court in proper perspective.

13. On hearing both the sides, we find there is merit in the submissions of the AR. In all these appeals, the CIT(A) has failed to decide the appeals of the assesseees in consonance with the above discussed direction of Hon'ble Apex Court in the case of Krishna SSK Ltd. (supra). Accordingly, in these bunch of appeals the issue of sale of sugar at concessional price to the members should be ideally remanded to the file of Assessing Officer for fresh consideration and adjudication of the issue on merits and law. In fact, the Hon'ble Supreme Court remanded the issue to the file of the CIT(A) for complying its direction in the case of Krishna SSK Ltd. (supra). However, in order to avoid multiplicity of the proceeding before different officers, and to be in tune with our findings given in para 7 of this order, we find, remanding to the file of the Assessing Officer is appropriate. Thus, we order accordingly. The Assessing Officer shall grant reasonable opportunity of hearing to the assesseees, in accordance with law. Accordingly, the grounds raised in the appeals of the Revenue and the assessee are allowed for statistical purposes."

*Respectfully following the decision cited hereinabove, the issue sale of sugar at concessional rate to member is remanded to the file of Assessing Officer for fresh adjudication for the purpose of giving effect to the directions of Hon'ble Apex Court in proper perspective. The Assessing Officer shall grant reasonable opportunity of hearing to the assesseees, in accordance with law. Thus, **Ground Nos.15 to 18 raised in appeal by the assessee is allowed for statistical purposes."***

4. Respectfully following the decisions cited hereinabove, the issue with respect to sale of sugar at concessional rate to Members is remanded back to

the file of the Id. A.O for fresh adjudication for the purpose of giving effect to the directions of the Hon'ble Apex Court in its proper perspective. The Id. A.O shall comply with the principles of natural justice and adjudicate the issue as per law. The ground of appeal raised by the assessee in this appeal is therefore, allowed for statistical purposes.

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

Order pronounced in the open Court on this 16th day of August 2022

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

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, the 16th day of August 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CCIT, Pune
4. The CIT(A)-2 Pune
5. D.R. ITAT 'B' Bench
5. Guard File

BY ORDER,

/// TRUE COPY ///

Sr. Private Secretary
ITAT, Pune.

1	Draft dictated on	10-08-2022	Sr.PS/PS
2	Draft placed before author	11-08-2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	16-08-2022	Sr.PS/PS
7	Date of uploading of order	16-08-2022	Sr.PS/PS
8	File sent to Bench Clerk	16-08-2022	Sr.PS/PS
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		